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ECONOMIC CRIMES IN THE PEOPLE'S REPUBLIC OF CHINA: A SWINGING DOOR POLICY

Cynthia B. Schultz*

INTRODUCTION

Recent changes in the economic and trade position of the People's Republic of China (China or PRC) in relation to the international community have resulted in an increased focus on China's domestic criminal justice system.¹ In 1978, China launched the "open-door" policy,² providing foreigners with access to Chinese markets. In the same year, China also adopted the "four modernizations" program³ that called for reforms in the areas of agriculture,⁴ industry,⁵ national defense, and science and technology.

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1. See Peng Zhen, *Explanation on Seven Laws*, BEIJING REV., July 13, 1979, at 8 (discussing the role of criminal law and criminal procedure law as being fundamental to socialist modernization); Shao-Chuan Leng, *Criminal Justice in Post-Mao China: Some Preliminary Observations*, 73 NW. U.J. CRIM. L. & CRIMINOLOGY 204, 206 (1982) (noting that post-Mao leaders endorsed a revitalization of the criminal justice and legal systems in carrying out their commitment to socialist modernization); see also Donovan, *The Structure of the Chinese Criminal Justice System: A Comparative Perspective*, 21 U.S. FLA. L. REV. 229 (1987) (providing a detailed analysis of the current Chinese criminal justice system).

2. See Horsley, *The Regulation of China's Foreign Trade*, in FOREIGN TRADE, INVESTMENT AND THE LAW IN THE PEOPLE'S REPUBLIC OF CHINA 5 (M. Moser 2d ed. 1987) (discussing various Chinese regulations on foreign trade). A goal of the open-door policy was to relax central administrative controls, thereby promoting more independence in local enterprises and individuals. *Id.* at 5. One of the effects of the open-door policy is an increase in trade. *Id.*; Guocang Huan, *China's Open Door Policy*, 39 J. INT'L AFF. 1 (1986) (discussing the political and economic background of the open-door policy). At the macroeconomic level, Deng's reforms involved decentralizing the central planning system, introducing price reform, and promoting development of private sectors. *Id.* At the microeconomic level, the Party advocated a more independent management system. *Id.*

3. See XUE MUQIAO, CHINA'S SOCIALIST ECONOMY 234-65 (1981) (providing a historical basis for China's need to modernize). Zhou Enlai originally proposed the "four modernizations" at the Third National People's Congress (NPC). *Id.* at 234. China concentrated on agriculture, industry, national defense, and science and technology because it dramatically lagged behind capitalist countries in these areas. *Id.* at 235. In an effort to increase labor productivity, the Chinese government concentrated on the development of industry to assist the agricultural sector. *Id.* at 236. The government needed the four modernizations program to provide security to strengthen socialist modernization. *Id.* at 241; see also Lussenburg, *Joint Venture Investment in the People's Republic of China: A Continuing Challenge*, 63 CAN. B. REV. 545, 545-46 (1986) (discussing the four modernizations).

4. See XUE MUQIAO, *supra* note 3, at 241, 244-53 (recognizing agriculture as the

New systemic features have emerged since the open-door policy. For example, central administrative control, as practiced during the Maoist period,⁶ began to weaken markedly in the mid-1980s.⁷ This led to a greater fragmentation of central power as the Communist party of China (Party) began to relinquish part of its control to local governments.⁸ The resultant increase in local autonomy created more opportu-

most significant sector in the national economy); see also THE PEOPLE'S REPUBLIC OF CHINA: A DOCUMENTARY HISTORY OF REVOLUTIONARY CHANGE 214-25, 339-40 (M. Selden ed. 1979) (discussing the formation of agrarian law and rural cooperatives); Zhan Wu & Liu Wenpau, *Agriculture*, in CHINA'S SOCIALIST MODERNIZATION 219-246 (G. Yu ed. 1984) (arguing for the retention of collective farming as opposed to individual farming with household ownership and land contracts); Khan & Ng Gek-boon, *Achievements and Incentives in Communal Agriculture: The Case of China*, in AGRARIAN SYSTEMS & RURAL DEVELOPMENT 262-73 (D. Ghai ed. 1979) (providing analysis on individual incentives such as rewards and demerits, and collective incentives such as agricultural taxation). But see Landy, *Agricultural Reforms in China*, 39 J. INT'L AFF. 91, 99-104 (1986) (discussing the negative aspects of the decollectivization policy). The rural responsibility system is also known as the decollectivization policy. *Id.* This system allows individual families to contract for a period of three to fifty years for the private use of a piece of land in return for certain obligations to the collective. *Id.* This combination of private investment and socialist ownership results in disparities in income distribution and may lead to disharmony in rural areas. *Id.* at 100. Decollectivization will have a detrimental impact on rural social services. *Id.* at 101.

5. See XUE MUQIAO, *supra* note 3, at 253-65 (noting that industrial modernization requires advanced technology and effective management); Solinger, *Industrial Reform: Decentralization, Differentiation, and the Difficulties*, 39 J. INT'L AFF. 105 (1986) (providing an analysis of the pre-1979 industrial system through the major industrial reforms of the mid-1980s).

6. See XUE MUQIAO, *supra* note 3, at 203-33 (discussing the Maoist system of economic management). Central management set commodity and production targets that local authorities had to follow. *Id.* at 204. In addition, central management controlled all revenue and expenditures and allocated funding to the provincial and local governments. *Id.*; see also Hong, *The Implications of Reform for Ideology, State and Society in China*, 39 J. INT'L AFF. 77 (1986) (noting Maoist philosophy on central control).

7. See Hong, *supra* note 6, at 78-80 (discussing the retreat of the state's role in society); Lee, *Foreign Trade Decentralization: Its Origin and Future*, 4 CHINA TRADE 66 (1981) (discussing the authority given to local, provincial, and autonomous governments to control the export and import of locally produced goods). Relaxing central economic management by relinquishing direct trading power to local governments creates a higher dependency on foreign imports. *Id.* at 5; You Chunmei, *Current Administrative Reform in China*, 52 INT'L REV. ADMIN. SCI. 123, 126 (1986) (providing a detailed study on the administrative reform of central provincial and local government bureaucracies).

8. See XUE MUQIAO, *supra* note 3, at 210-33 (discussing the process of the management of state enterprises and the national economy involving reforms in financial administration and hierarchical structural power).

For laws addressing the transfer of power over domestic matters to local levels, see RESOLUTION OF THE SECOND SESSION OF THE FIFTH NATIONAL PEOPLE'S CONGRESS REVISING SEVERAL PROVISIONS OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA (promulgated on July 1, 1979, and effective on Jan. 1, 1980), reprinted in THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 1979-1982 162 (1987) [hereinafter PRC LAWS, 1979-1982] (amending the Resolution to empower local governments with lead-

nity for personal and institutional corruption.⁹

In addition, with the decentralization of control, the Party lost much of its moral authority.¹⁰ During the tenure of Communist Party Chairman Mao Tsetung, the Party relied on various rectification campaigns to impose elements of fear on the Chinese people.¹¹ Although, the

ership and decision making authority as opposed to supervisory authority): RESOLUTION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS AUTHORIZING PROVINCES, AUTONOMOUS REGIONS, AND MUNICIPALITIES DIRECTLY UNDER THE CENTRAL GOVERNMENT TO ESTABLISH STANDING COMMITTEES OF PEOPLE'S CONGRESSES AND CHANGE REVOLUTIONARY COMMITTEES TO PEOPLE'S GOVERNMENTS IN 1979 (promulgated on Sept. 13, 1979, and effective Jan. 1, 1980), *reprinted in* PRC LAWS, 1979-1982, *supra*, at 165 (allowing local governments to establish standing committees); DECISION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS REGARDING DIRECT ELECTION AT THE COUNTY LEVEL (promulgated on Feb. 12, 1980), *reprinted in* PRC LAWS, 1979-1982, *supra*, at 197 (allowing experimental direct elections at the local and provincial level and in autonomous regions); RESOLUTION OF THE FIFTH SESSION OF THE FIFTH NATIONAL PEOPLE'S CONGRESS REVISING CERTAIN PROVISIONS OF THE ORGANIC LAW OF THE LOCAL PEOPLE'S CONGRESSES AND LOCAL PEOPLE'S GOVERNMENTS OF THE PEOPLE'S REPUBLIC OF CHINA (adopted on Dec. 10, 1982), *reprinted in* PRC LAWS, 1979-1982, *supra*, at 366 (relinquishing broad powers to local governments); ORGANIC LAW OF THE LOCAL PEOPLE'S CONGRESSES AND LOCAL PEOPLE'S GOVERNMENTS OF THE PEOPLE'S REPUBLIC OF CHINA (promulgated and effective on Dec. 10, 1982), *reprinted in* PRC LAWS, 1979-1982, *supra*, at 368, *as amended by* DECISION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS REGARDING THE REVISION OF THE ORGANIC LAW OF THE LOCAL PEOPLE'S CONGRESSES AND LOCAL PEOPLE'S GOVERNMENTS OF THE PEOPLES REPUBLIC OF CHINA (promulgated on Dec. 2, 1986), *reprinted in* THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 1983-86 328 (1987) (delineating broad powers to local governments) [hereinafter PRC LAWS, 1983-1986].

For legislation addressing the transfer of control on foreign trade matters to local governments, see DECISION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS ON AUTHORIZING THE MINISTRY OF FOREIGN ECONOMIC RELATIONS AND TRADE (MOFERT) TO EXERCISE THE POWER OF RATIFICATION OF THE FORMER FOREIGN INVESTMENT COMMISSION (adopted on Mar. 5, 1983) *reprinted in* PRC LAWS, 1983-1986, *supra*, at 19 (empowering MOFERT to handle foreign economic relations); *see also supra* note 2, at 7-14 (discussing the changes in the foreign trade management structure of the PRC after the decentralization of trading authority). MOFERT is responsible for setting foreign trade policy with the State Planning Commission and supervises local foreign trade bureaus. *Id.* at 9. Local foreign trade bureaus share leadership with MOFERT. *Id.* at 11. National Foreign Trade Corporations (NFTC), once possessing a monopolistic role over trade management and contracts, now allow local authorities to supervise local branches of the NFTC. *Id.*

9. *See* Horsley, *supra* note 2, at 6 (quoting a Chinese official who notes that decentralization has led to corrupt activities such as the importation of luxury items and the exportation of consumer goods in short supply domestically).

10. *See* Fenwick, *Crime in Post-Mao China: Toward the Construction of an Integrated Social Systems Theory*, 11 INT'L J. COMP. & APP. CRIM. JUST. 177 (1987) (investigating changes in social behavior and societal reaction to modernization). The lack of law during the Cultural Revolution brought a decrease in respect for moral authority. *Id.* at 184. Chinese citizens began to doubt the Chinese government and its ideology. *Id.*

11. *See* Johnson, *Politics, Power and Prevention: The People's Republic of China Case*, 14 J. CRIM. JUST. 449, 451-52, (1986) (identifying police power, economic

Party under Deng Xiaoping has imposed similar campaigns against crime and corruption, albeit to a lesser degree, attempts to instill fear have failed.¹² Moreover, the Party recently established a two-tiered pricing system,¹³ which created its own array of economic crimes such as speculation and arbitrage.¹⁴

Both the open-door policy and the four modernizations brought an increase in economic crimes such as speculative arbitrage, speculation, extortion, bribery, and embezzlement.¹⁵ To combat the deleterious ef-

power, political power, ideological power, and diversionary power as methods exploited by Mao to retain social control over the Chinese people).

12. See Fenwick, *supra* note 10, at 187 (noting that a change of focus from political ideology under Mao, to a legal-rational authority promoted by Deng, is responsible for lawless behavior). But see *id.* (noting that anticorruption campaigns in the 1980s have had a deterrent effect on crime); see also Hong, *supra* note 6, at 81 (noting the decline in the importance of ideology "demoralized" many government officials who spent much of their lives promoting Maoist ideology). Deng Xiaoping, after his accession to leadership of the Communist party in 1977, instituted drastic changes in economic and administrative reform. *Id.* at 82-84. Deng's bureaucratic reforms encouraged private business and created a "new elite." *Id.* at 84-89.

13. See XUE MUQIAO, *supra* note 3, at 135-62 (providing background material on the law of value, price policy, and the reform of the Chinese price control system). Xue Muqiao, a distinguished Chinese economist, advocates a degree of independence when setting prices at the local level and for individual enterprises. *Id.* at 156.

14. *Economists Discuss Economic Results*, Xinhua [in Chinese], June 8, 1983, *trans. in* FOREIGN BROADCAST INFORMATION SERVICE, DAILY REPORT: PEOPLE'S REPUBLIC OF CHINA [hereinafter F.B.I.S.—CHI], June 9, 1983, at K10 (noting that the long-practiced system of the state setting prices distorted the market because the prices failed to reflect real value). In 1987 the State Council on Regulations identified three forms of pricing: state-fixed, state-approved, and market-determined prices. *Speculation, Corruption Hampers China's Price Reform*, Investor's Daily (Los Angeles), Nov. 2, 1987, at 10 [hereinafter *Speculation*] (noting that state-fixed prices usually govern important raw materials, state-approved prices govern consumer goods, and market-determined prices are allowed for vegetables and light consumer products). One of the inherent problems with different price-controlling mechanisms is known as "doubletracking," where both state and market prices are allowed. *Id.* Doubletracking creates price differentials, making it economically profitable to buy at lower state prices and sell at higher market demand prices. *Id.* Those most responsible for price increases are the state-owned enterprises. *Group to Trace 'Backstage Boss,'* China Daily, Sept. 4, 1987, at 1. Those state-owned enterprises most guilty of imposing price increases produce rolled steel, timber, cement, chemical fertilizers, electric power, and petroleum. *Id.* Price subsidies in 1986 reached U.S. \$56 billion, one-fourth of state revenues. *Id.* Doubletracking also creates income disparities between state-supervised wages and private sector earnings. *Id.*

15. See Rider, *White Collar Crime: The Unacceptable Face of Communism*, 2 COMPANY LAW. 85 (1981) (discussing examples of white collar crimes, such as speculation, smuggling, and divulgence of state secrets); Dinmore, *Chinese Make Capital From Their Connections*, 2 COMPANY LAW. 86 (1981) (discussing the increase in cases of bribery and corruption since the open-door policy); Kin Tongwen, *Oppose Liberal Tendencies*, Hongqi [in Chinese], Jan. 16, 1981, *trans. in* F.B.I.S.—CHI, Feb. 13, 1981, at L8 (noting that the Party speaks out against liberal tendencies shown by Party members); *Use the Weapon of Law to Crack Down on Criminal Activities*, Xinhua [in Chinese], June 22, 1981, *trans. in* F.B.I.S.—CHI, June 23, 1981, at K3 (holding the

fects of these crimes on China's social and economic development, the Chinese government enacted the Criminal Law Code¹⁶ and Criminal Procedure Code.¹⁷ These codes aid in the ongoing transition from an

imported bourgeois ideology and way of life responsible for the increase in crime); *Everyone Should Give Publicity To and Help Implement the Important Resolution to Defend the Socialist System*, Xinhua [in Chinese], Mar. 9, 1982, trans. in F.B.I.S.—CHI, Mar. 10, 1982, at K4, K10 [hereinafter 1982 Editorial on Punishing Criminals] (discussing how the increase in economic crime became a major problem in China because of its distinct increase in foreign trade since the open-door policy); Bonavia, *Open Door to Disorder?*, FAR E. ECON. REV., Sept. 29, 1983, at 38 (noting that high level officials criticized Deng Xiaoping's open-door policy for its direct causation of crime); Weisskopf, *China Stalks Urban Crime*, Wash. Post, Aug. 22, 1983, at A13 (noting that the conservative contingent in Chinese leadership complained about the corrupting effect of bourgeois decadent influences on socialist ideology). In 1987, this conservative contingent curbed many of Deng's reforms. *Id.*; Drozdak, *Pace of Reforms Falters in China as Opposition Campaign Advances*, Wash. Post, Mar. 8, 1987, at A3 (relating a power struggle in 1987 that challenged Deng's economic reforms and ability to rule); Tyson, *Beijing Lashes Out at Liberal Intellectuals*, Christian Sci. Monitor, Mar. 6, 1989, at 4 (noting that Communist Party General Secretary Zhao Ziyang condemned liberal intellectuals who advocate a more capitalistic approach to democracy). The Party issued a circular to officials warning them of social unrest. *Id.* Zhao blamed the social unrest on the spreading of the "evils of capitalism." *Id.* Zhao associated the social turmoil with concepts of Western democracy instead of socialist democracy. *Id.*; see also Fenwick, *supra* note 10, at 181 (noting modernization as a variable contributing to the increase in the conventional crime rate since 1976); Johnson, *supra* note 14, at 455 (discussing the increase of criminal cases in the 1980s); Comment, *The 1986 Provisions to Encourage Foreign Investment in China: Further Evolution in Chinese Investment Laws*, 2 AM. U.J. INT'L L. & POL'Y 579, 580 n.1 (1987) (discussing the change of power of top Party officials and their internal battle over economic reform).

16. See ZHONGHUA RENMIN GONGHEGUO XING FA (CRIMINAL LAW CODE OF THE PEOPLE'S REPUBLIC OF CHINA), trans. in 25 CHINA, AMERICAN SERIES OF FOREIGN PENAL CODES (Rothman & Co. 1982) [hereinafter CRIMINAL LAW CODE] (dividing the 192 articles of the Chinese Criminal Law Code into two parts: the general provisions, arts. 1-89 and specific provisions, arts. 90-192). The general provisions deal with the fundamental principles of Chinese criminal law. The specific provisions define crimes, prescribe their penalties, and set out the range of discretion allowed in sentencing. *Id.* Under the general provisions, the definition of crime, *id.* art. 10, the elements of foreseeability and negligence in a crime, *id.* art. 12, as well as criminal punishment, *id.* art. 28-32, and its application, *id.* art. 61, have basically retained their status as Mao first proposed. Seven distinct categories of crime are enumerated under the specific provisions. In the forefront are counterrevolutionary crimes. *Id.* arts. 90-104. This is followed by crimes endangering the public security. *Id.* arts. 105-15. Third are the crimes against the socialist economic order. *Id.* arts. 116-30. Fourth are the crimes against citizen's right of person and democratic rights. *Id.* arts. 131-49. This category of crime is the only significant divergence from Maoist thought and is a byproduct of the negative effects and injustices of the Cultural Revolution. The last four crimes are, encroachment of property, *id.* arts. 150-56, crimes against the societal management and order, *id.* arts. 157-78, crimes against marriage and family, *id.* arts. 179-84, and crimes of misconduct in office, *id.* arts. 185-92. See generally Donovan, *supra* note 1, at 249-58 (comparing the Chinese Criminal Law Code with the Soviet and several Western Criminal Law Codes).

17. See ZHONGHUA RENMIN GONGHEGUO XINGSHI SUSONG FA (CRIMINAL PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA), trans. in 26 CHINA, AMERICAN

inefficient state-controlled economy¹⁸ to experimentation with a market-oriented economy.¹⁹

In addition, the government periodically announced major anticrime and anticorruption campaigns throughout the 1980s.²⁰ Government campaigns imposed significant reforms on a criminal justice system that had been virtually nonexistent since the Cultural Revolution.²¹ The rapid increase in foreign investment in China,²² coupled with do-

SERIES OF FOREIGN PENAL CODES (Rothman & Co. 1985) [hereinafter CRIMINAL PROCEDURE CODE] (delineating the Criminal Procedure Code into four parts). Part one addresses issues such as jurisdiction, defense, evidence, and time periods. *Id.* Part two handles the filing of a case and the investigation and initiation of public prosecution. *Id.* Part three involves trial procedure. *Id.* Part four deals with the execution and enforcement of judgments. *Id.* The public security organs carry out the investigation along with the procuratorial organs. *Id.* art. 3. If the procuratorate determines that there is sufficient evidence, then it will issue an indictment. *Id.* art. 100. Thereafter, the basic, intermediate or higher people's court conducts a trial which is divided into four stages: investigation, debate, appraisal by the bench, and judgment. *Id.* part III, ch. 1 & ch. II, § 1.

Compared to other countries, many differences in Chinese criminal procedure exist, but they are not examined in this Comment. For a more detailed discussion on Chinese Criminal Procedure Law, see Shao-Chuan Leng, *supra* note 1, at 214-35 (discussing pretrial proceedings, right to counsel, presumption of innocence, judicial independence, equality before the law, and issues of appeal and review); Epp, *The New Code of Criminal Procedure in the People's Republic of China: Protection, Problems, and Predictions*, 8 INT'L J. COMP. & APP. CRIM. JUST. 43 (1984) (addressing issues and problems exclusive to Chinese criminal procedure law). Usually, by the time a defendant appears at trial, the court has already found him or her guilty. *Id.* at 45. No equivalent U.S. constitutional fifth amendment right to remain silent exists, and the right to counsel first attaches at trial level. *Id.* at 46. No hearsay rule exists and the defendant has a right to only one appeal. *Id.* at 49; see also Qiwu Zhu, *General Aspects of the Chinese Criminal Code and the Code of Criminal Procedure*, 2 UCLA PAC. BASIN L.J. 65 (1983) (providing a brief overview of Chinese criminal law and criminal procedure).

18. Jiang Zhenyun, *New Constitution Provides Guarantees for Economic Reform*, Jiefang Ribao [in Chinese], Feb. 9, 1983, *trans. in* JOINT PUBLICATION RESEARCH SERVICE: PEOPLE'S REPUBLIC OF CHINA [hereinafter J.P.R.S.—CHI] No. 83779, June 28, 1983, at 47 (blaming government officials' malfeasance of state management and administration for crippling the state-run economy).

19. Shao-Chuan Leng, *supra* note 1, at 206.

20. See DECISION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS REGARDING THE SEVERE PUNISHMENT OF CRIMINALS WHO SERIOUSLY SABOTAGE THE ECONOMY (adopted Mar. 8, 1982), *reprinted in* PRC LAWS, 1979-1982, *supra* note 8, at 345 (providing an example of one such campaign). In March 1982, the Standing Committee of the NPC issued a statement recognizing the serious effects that economic crime had on social and economic development. *Id.* The Committee identified crimes such as speculative arbitrage, speculation, extortion, bribery, and embezzlement and proposed strict measures to punish offenders. *Id.*; see also *infra* notes 206-36 and accompanying text (discussing the anticorruption campaigns from 1979-1988). On October 1, 1988, the Chinese Communist Party, issued a communique imposing significant economic reforms to combat the surge of inflation and corruption in China. *Id.*

21. Peng Zhen, *supra* note 1, at 8 (discussing the first laws to be drafted since China's shift to socialist modernization in 1979).

22. ZHONGHUA RENMIN GONGHEGUO XIANFA (THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA) (adopted on Dec. 4, 1982), *reprinted in* PRC LAWS,

mestic structural market changes²³ such as independent managerial responsibility,²⁴ collective ownership,²⁵ and the introduction of private enterprise,²⁶ have been a significant impetus in China's anticrime campaigns.

In October 1988 after ten years of unimpeded efforts to replace China's central economic planning mechanisms with more flexible market mechanisms, the Central Committee officially recognized the two most inherent problems with economic reforms, namely, inflation and corruption.²⁷ As a result, the Party announced its decision to temper economic reforms in an attempt to decrease inflation and restrain corruption.²⁸ Accordingly, the Party introduced significant reform mea-

1979-82, *supra* note 8, at 9. The First PRC Constitution was promulgated in 1954 and was officially revised in 1975, 1978, and 1982. Article 18 provides in whole:

The People's Republic of China permits foreign enterprises, other foreign economic organizations and individual foreigners to invest in China and to enter in various forms of economic cooperation with Chinese enterprises and other Chinese economic organizations in accordance with the law of the People's Republic of China.

All foreign enterprises, other foreign economic organizations as well as Chinese-foreign joint ventures within Chinese territory shall abide by the law of the People's Republic of China. Their lawful rights and interests are protected by the law of the People's Republic of China.

Id.

23. Jiang Zhenyun, *supra* note 18, at 48-50 (discussing the changes in the 1982 PRC Constitution that impact the liberalization of economic reform).

24. *Vigorously Promote and Properly Administer Market Trade in Towns and Countryside*, Jingji Ribao [in Chinese], Feb. 24, 1983, *trans.* in J.P.R.S.—CHI No. 83174, Apr. 1, 1983, at 85 [hereinafter *Rules of Management and Market Trade*]. In 1983, the State Council issued Rules of Management and Market Trade in Towns and Countryside. *Id.* These rules are the first to provide legal structure to market trade in China since 1949. *Id.* Two important underlying principles of the rules are mutual competition and joint development. *Id.* at 86. Before units and individuals may participate in market trade, however, they must fulfill the state quotas. *Id.*; see *infra* notes 184-86 and accompanying text (discussing the economic responsibility system).

25. CONST. OF THE PEOPLE'S REPUBLIC OF CHINA art. 8 (1982). Article eight provides encouragement for collective ownership in urban and rural areas. *Id.* The 1982 Constitution recognized economic collectives in rural areas, yet permitted them to engage in limited aspects of agricultural production for their private use. *Id.*

26. CONST. OF THE PEOPLE'S REPUBLIC OF CHINA art. 11 (1982). Individual economy in urban and rural areas is permitted but subject to restrictions. *Id.* The state has the duty of protecting the lawful rights and interests of the individual economy as well as the task of supervising them through administrative control. *Id.*

27. See Jones, *Asia's Success-Story Nations Learning How to Consume*, Wall St. J., Nov. 1, 1988, at A24 (reporting China as the only country with moderate inflationary problems in the Asia-Pacific region); Southerland, *China Presses New Anticorruption Drive*, Wash. Post, Oct. 21, 1988, at A26 (naming inflation as one of the causes of the 1988 anticorruption campaign); *China Squeezes Credit, Orders Financial Probe*, Wall St. J., Oct. 17, 1988, at A18 (announcing measures to freeze loans for investment projects not covered by the state plan and to investigate finance companies in an effort to combat inflation and stabilize prices).

28. See Ignatius, *China to Postpone Some Joint Ventures With Foreigners in Bid*

asures to control corruption, profiteering, and price-gouging.²⁹ These measures, however, may prove to have an adverse effect on foreign investment in China by restricting desperately needed capital investment projects.³⁰

China is an important developing country struggling to restructure its economy from a largely archaic centrally planned system to that of a market-oriented system. Its efforts are only ten years old. Other developing socialist countries are focusing their attention on the successes and failures of China's economic modernization plan.³¹ Although it is

to Cool Economy, Wall St. J., Dec. 7, 1988, at A11 (announcing the cancellation of all new foreign investment ventures and of some existing joint ventures in an effort to curb inflation and revitalize the economy); Ignatius, *Foreign Firms Learning How to Combat Beijing Bureaucracy's Bullying Tactics*, Wall St. J., Jan. 12, 1989, at A12 [hereinafter Ignatius, *Beijing Bureaucracy's Bullying Tactics*] (noting that the measures imposed in October to slow economic growth due to inflation dampened foreign investment).

29. Ignatius, *Beijing Bureaucracy's Bullying Tactics*, *supra* note 28, at A12.

30. *Id.*; see Ignatius, *Chinese Premier Rules Out Chance of Rapid Reforms*, Wall St. J., Apr. 4, 1989, at A19 [hereinafter Ignatius, *Chinese Premier Rules*] (stating that Chinese Premier Li did not advocate Soviet-like political reforms during the two-year austerity program that would markedly stifle economic reforms); Gumbel, *Moscow Opens Its Far East to Foreigners*, Wall St. J., May 3, 1989, at A14 (describing the Soviet Union's intent to create a special economic zone modelled after the Hong Kong and Chinese plans in Vladivostok); Keller, *Soviets and China to Renew Normal Ties After 30 Years; Beijing Pledges Democracy*, N.Y. Times, May 17, 1989, at 1 (discussing Chinese-Soviet negotiations for more exchange in the areas of political and economic reforms); Gumbel, *Sino-Soviet Summit Can't Top the Amity Rising on the Frontier*, Wall St. J., May 12, 1989, at A1 (quoting Vladimir Ivanov, a leading Moscow-based expert on China as stating that, "China could be the No. 1 partner for the Soviet Union"); Gumbel & Ignatius, *Moscow and Beijing Sharing the Lessons of Revisionism*, Wall St. J., May 12, 1989, at A12 (comparing economic statistics of the Soviet Union and China and discussing the benefit of exchanges in the areas of political and economic reform); Gumbel & Ignatius, *Widening Demonstrations Disrupt Historic Chinese-Soviet Meeting*, Wall St. J., May 16, 1989, at A11 (noting that the Chinese-Soviet Summit marked the restoration of normal relations between both countries); see also *Communism in Turmoil*, BUS. WEEK, June 5, 1989, at 34-86 (discussing and comparing recent developments in political and economic reforms in the Soviet Union and China); Schares, *Glasnost's Twin Crucibles*, BUS. WEEK, June 5, 1989, at 72 (noting that Poland and Hungary are setting the pace for economic reforms by experimenting with free market mechanisms).

31. *China and Soviets Ready Venture, Signaling Thaw*, Wall St. J., Oct. 13, 1988, at A18 (reporting that the Soviet press praises the Chinese modernization plan and considers it an economic model). Signals are emerging that the Soviet Union is watching China's progress carefully to take lessons in economic reform. *Id.*; *Sino-Soviet Rapprochement Is Restrained*, Wall St. J., Oct. 17, 1988, at A18 (noting that Moscow is aggressively pursuing a summit with China); Tyson, *Moscow and Beijing: New Lab Partners in Socialist Experiment*, CHRISTIAN SCI. MONITOR, Feb. 7, 1989, at 1 (noting that the Soviet Union is considering adopting China's economic reforms). Joint studies on economic reforms have already begun. *Id.* China noted that a lack of political reform has stifled economic reform. *Id.* at 2. The Chinese are considering adopting a form of Moscow's *glasnost* policy to strengthen its political reform. *Id.*; Gumbel, *Soviet Trade Awaits the Next Revolution*, Wall St. J., Feb. 21, 1989, at A16 (noting that as

too early to predict how many countries will follow China's lead, it appears that the trend to liberalize state-controlled economies through the implementation of market-oriented economic mechanisms will continue. This comment will analyze how effectively the new Criminal Law Code controls economic crimes. Its purpose is to identify and analyze the very serious trend of increasing economic crime that could present an earnest threat to ongoing foreign trade. Generally, legal regulation becomes a powerful policing mechanism when a developing country implements free market measures of economic reform. China, as a developing communist country, must confront the antagonism of an internal socialist economic system attempting to merge with foreign capitalist trade policies.³²

Part I of this Comment will discuss the nature of criminal law in China during the pre-Mao, Mao, and post-Mao periods. Part II will discuss the Party's attempt to curb increased economic crime, focusing on specific crimes that have resulted from China's shift toward economic development. Finally, Part III will evaluate the impact of the Criminal Law Code on China's new economic policy in both the domestic and international arenas.

I. HISTORICAL PERSPECTIVE

A. PRIOR TO THE FOUNDING OF THE PRC

In the centuries before Mao Tsetung the Chinese government achieved social order not through the concept of criminal law, but rather from the ideology of two opposing schools of thought—the Confucianists and the Legalists.³³ The Confucianists employed the ethical

of April 1, 1989, Soviet companies were scheduled to begin trading directly with foreign companies); Seib & Ignatius, *U.S.-China-Soviet Links Enter New Phase*, Wall St. J., Feb. 23, 1989, at A12 (noting that the Soviet Union and China are placing emphasis on economic cooperation). China needs the Soviet Union to rehabilitate its Marxist-Leninist-Maoist ideology base among the Chinese people. *Id.* The Soviets need the Chinese to restructure their internal economy. *Id.*

32. CONST. OF THE PEOPLE'S REPUBLIC OF CHINA art. 24 (1982) (requiring the State to conduct education "among the people in patriotism and collectivism, in internationalism and communism and in dialectical and historical materialism, to combat capitalist, feudal and other decadent ideas." (emphasis added)).

33. See MacCormack, *Law and Punishment in the Earliest Chinese Thought*, 20 *IR. JURIST* 334 (1985) (discussing the inherent conflicts in the prevalent philosophies followed in Chinese culture); Schwartz, *On Attitudes Toward Law in China*, in KATZ, *GOVERNMENT UNDER LAW AND THE INDIVIDUAL* 27-39 (1957) (noting that in period of economic turmoil *li*, an ethical concept of virtue and balance, is not influential). Thus, when *li* is ineffective, *fa* is implemented to maintain social order. *Id.* The mechanism *fa* employed to maintain social order is penal in nature. *Id.*; Bodde, *Basic Concepts of Chinese Law*, in D. BODDE & C. MORRIS, *LAW IN IMPERIAL CHINA* 3-11, 29-51 (1967) (noting that in premodern China, law was penal in nature applied against

concept of *li* (virtue and balance) as a means of persuading Chinese citizens to live moral and crime-free lives.³⁴ As a result of the concept of *li*, however, the Chinese nurtured a strong belief in the rules of conduct. This belief forced the individual to conform to accepted behavior because of a moral persuasion rather than a fear of punishment.³⁵ Punishment under *li*, therefore, emphasized repentance and rehabilitation of the offender and not revenge or retribution.³⁶

Conversely, the Legalists subscribed to the theory of *fa*, which used punishment as its tool of control.³⁷ Where *li* encouraged harmony in a nonlitigious atmosphere³⁸ and emphasized virtue within the individual,³⁹ *fa* used penal and administrative rules, incentives of reward, and fear to reform men.⁴⁰ Ultimately, the Legalist ideology prevailed, resulting in the establishment of *fa* as law. Thus, law and legal institutions enhanced the power of the state by becoming "weapons of law"⁴¹ and effectively coerced the people to adhere to state policies.⁴² Although the Party continues to promote the concept of *fa*, its recent ma-

acts disrupting the social order). The state almost never used the law during this period to protect the rights of individuals or economic rights. *Id.*

34. See V. LI, *LAW WITHOUT LAWYERS: A COMPARATIVE VIEW OF LAW IN CHINA AND THE UNITED STATES* 13 (1978) (discussing traditional Chinese society's emphasis on virtue instead of law).

35. Allen, *Where Are We Going in Criminal Justice? Some Insights from the Chinese Criminal Justice System*, 31 INT'L J. OFFENDER THERAPY & COMP. CRIM. 101, 103, 107-08 (1987); see McCormack, *supra* note 33, at 334 (discussing various ancient, historical, and traditional interpretations of the meaning of punishment).

36. Shao-Chuan Leng, *Crime and Punishment in Post-Mao China*, 2 CHINA L. REP. 5 (1982); see Johnson, *supra* note 11, at 449 (stating that the employed methodology of rehabilitation and preventative measures are weakening in the PRC); Qiwu Zhu, *supra* note 16, at 68 (addressing the issue of rehabilitation).

37. Bodde, *supra* note 33, at 6-15 (distinguishing the concepts of *fa* and *li*).

38. J.A. COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA, 1949-1963: AN INTRODUCTION* 66 (1968) [hereinafter COHEN, *THE CRIMINAL PROCESS*]; see Gelatt, *Resurrecting China's Legal Institutions*, *Asian Wall St. J.*, Mar. 29, 1980, at 4 (noting that the emperor of China issued an edict in 1820 mandating severe punishment for those in the profession of practicing litigation).

39. COHEN, *THE CRIMINAL PROCESS*, *supra* note 38, at 64.

40. Schwartz, *supra* note 33, at 67; see *China's Socialist Legal System*, *BEIJING REV.*, Jan. 12, 1979, at 25, 30 (stating that law is an essential element in the development of productive forces in China and must be drafted and refined to meet that task); McCormack, *supra* note 33, at 42 (revealing that *fa* has meant "rule established by Heaven").

41. *Use the Weapon of Law to Crack Down on Criminal Activities*, *supra* note 15, at K2 (describing the "weapon of law" as a concept that Mao coined, and it refers to the law of the country). Under Mao, the meaning of the phrase differed from its current use because the laws were subject to arbitrary interpretation. *Id.* The new administration retained the phrase. *Id.* During the anticrime campaign in 1981, the phrase was used to "strike blows at the enemy, punish offenders, and protect the people." *Id.*

42. COHEN, *THE CRIMINAL PROCESS*, *supra* note 38, at 7.

for policy changes frustrate the acceptance of the concept of *fa* as a guiding philosophy among the Chinese.

B. MAO PERIOD

When the Party, led by Mao Tsetung, wrested control of China from the Nationalist party in 1949,⁴³ it adopted a two-tiered system of criminal justice, which imposed different standards of conduct and levels of punishment for crimes according to the nature of the crime and the status of the offender.⁴⁴ The first tier focused on serious crimes⁴⁵ against the state. The second tier focused on less serious offenses.⁴⁶ Corresponding to these qualitative differences, Mao labeled offenders of

43. See M. BLECHER, *CHINA: POLITICS, ECONOMICS AND SOCIETY* 18-31 (1986) (discussing the history of the Chinese Revolution). The Party was founded in 1921. *Id.* at 18. Mao became a leader in the Communist movement in 1927. *Id.* at 19. Mao was also a great advocate of rectification campaigns to establish social order. *Id.* at 28. The essence of the campaigns was to utilize "criticism and self-criticism" rather than punitive action. *Id.* at 28; J. DOMES, *THE GOVERNMENT AND POLITICS OF THE PRC: A TIME OF TRANSITION* 68-85 (1985) (discussing the organizational structure and membership of the Party).

44. See Shao-Chuan Leng, *The Role of Law in the People's Republic of China as Reflecting Mao Tse-Tung's Influence*, 68 NW. U.J. CRIM. L. & CRIMINOLOGY 356 (1977) (discussing Mao's impact on Chinese legal development); see also H. CHIU & S. LENG, *CRIMINAL JUSTICE IN POST-MAO CHINA: ANALYSIS AND DOCUMENTS* 10-28 (1985) (discussing the legal and criminal justice system under Mao).

45. See COHEN, *THE CRIMINAL PROCESS*, *supra* note 38, at 91 (stating that under the law of dictatorship, the Party created three categories of criminals: (1) counter-revolutionaries who acted against the state, including those who engaged in less severe activities, but were still considered able to undermine the realization of the proletariat and the socialist good of society; (2) bad elements of society who repeatedly committed acts affecting an individual; and (3) the people who committed derelictions of duty, generally limited to one time crimes committed by ordinary people). Counterrevolutionary crimes consisted of such acts as "subversion of the state regime, armed rioting, organization of secret agents and spies, theft of state military and political secrets and intelligence, spreading poison, arson, and setting off explosions." *Id.* The crimes of the recidivists were hooliganism, rape, stealing, and swindling that coordinated directly with counterrevolutionary sabotage. *Id.*; see also *infra* notes 158-207 (discussing economic crimes); CRIMINAL LAW CODE arts. 185-92 (PRC) (listing crimes of dereliction of duty to include state functionaries engaged in bribery, divulgence of state secrets, and neglect of duty); Allen, *supra* note 36, at 106 (illustrating a court trial when a defendant is punished for dereliction of duty).

46. See COHEN, *THE CRIMINAL PROCESS*, at 92 (noting that second-tier offenders include the crimes of bigamy, mistreatment, interference with the freedom of marriage of others, infanticide, and crimes arising from traffic and transportation incidents that cause serious consequences).

serious crimes "enemies"⁴⁷ and offenders of less serious crimes "people."⁴⁸

I. Dictatorship v. Democracy

To justify its police state, the Party under Mao asserted that China's previous history of imperialism and bureaucratic exploitation had "poisoned" the people's consciousness into a feudal and bourgeois ideology.⁴⁹ It used police courts and the weapon of law to combat serious offenses against the Communist government and punished offenders with death, imprisonment, or reform through labor.⁵⁰ During this period, the criminal law process served as an "instrument of terror."⁵¹ The police were solely responsible for administering "justice" as they deemed appropriate.⁵² Serious crimes were prosecuted by "mass trial."⁵³ Less serious offenses received informal administrative punish-

47. See *id.* at 79 (noting that counterrevolutionaries and criminals who committed crimes that seriously undermined the social order were termed "enemies" and punished by the imposition of "dictatorship"). The goals for imposing criminal punishment over administrative sanctions were threefold: punishment and rehabilitation of the offender, deterrence, and education and inspiration of the citizens to struggle against individuals prone to crime. *Id.* at 81.

48. Mao Tsetung, *On the Correct Handling of Contradictions Among the People*, in 5 SELECTED WORKS OF MAO TSETUNG 391 (1977). All nonenemies were considered members of the "people" class whose nonrevolutionary offenses were punished by what the Party referred to as "democracy." *Id.* This dichotomy is analogous to the United States criminal law classifications of felony and misdemeanor; see Cohen, *Reflections on the Criminal Process in China*, 68 NW. U.J. CRIM. L. & CRIMINOLOGY 323, 337-39 (1977) [hereinafter Cohen, *Reflections on the Criminal Process*] (providing discussion and examples of both the people and enemy classes).

49. COHEN, *THE CRIMINAL PROCESS*, *supra* note 38, at 76-78.

50. Note, *Concepts of Law in the Chinese Anticrime Campaign*, 98 HARV. L. REV. 1890, 1904 (1985). But see WORK REPORT OF THE SUPREME PEOPLE'S COURT, 5th NPC, 3rd Sess., (Sept. 2, 1980), *trans.* in F.B.I.S.—CHI, Sept. 16, 1980, at 41, 42 [hereinafter 1980 REPORT] (noting that the "Gang of Four" greatly exaggerated criminal activity charges and penalties during the Cultural Revolution). The Party unjustly charged many Party members and intellectuals with counterrevolutionary crimes. *Id.*

51. See COHEN, *THE CRIMINAL PROCESS*, *supra* note 38, at 10 (elaborating on the police use of violence against reactionaries and bad elements).

52. *Id.*

53. See *Use the Weapon of Law to Crack Down on Criminal Activities*, *supra* note 15, at K2-3 (noting that "mass trial" actually refers to a mass rally where the Party announces judgment on a criminal case to the public). The purpose of the mass rally is to provide "wide publicity [of] the legal system, display the might of the people's democratic dictatorship, enhance the morale of the masses and strike terror into criminals' hearts." *Id.*; Cohen, *Reflections on the Criminal Process*, *supra* note 48, at 342-43 (explaining the procedure of mass trials); see also Herbst, *Criminal Procedure Under China's Newest Constitution*, *Asian Wall St. J.*, Jan. 19, 1983, at 6 (identifying the problem with mass trial convictions as the very short length of time between arrest, trial, appeal, and execution). In most capital cases appeal is not allowed. *Id.* Although the 1982 Constitution deleted the use of mass trials, the Party, Supreme People's

ments, such as criticism, fines, brief detentions, or rehabilitation through labor,⁵⁴ with no criminal liability.⁵⁵ Criminal law, as the Chinese learned, was reserved for serious offenses perpetrated by enemies of the state that were subject to harsher penalties.

2. Legislation for Punishment

The Party devised a system consisting of three legislative acts to enforce its criminal justice system and punish offenders: the Act of the PRC for the Punishment of Counterrevolutionaries (Counterrevolutionary Act),⁵⁶ the Act of the PRC for Punishment of Corruption (Corruption Act),⁵⁷ and the Security Administration Punishment Act of the PRC (SAPA).⁵⁸ The Party designed the Counterrevolutionary Act to

Court, and the government still advocate the use of mass trials which still play an instrumental part in the criminal process. *Id.*; *Supreme Court Issues Circular on Economic Crimes*, *Zhonghua Fazhi Bao* [Chinese Legal System News], *trans. in* F.B.I.S.—CHI, Apr. 5, 1982, at K13 (announcing that the Supreme Court issued a directive calling for open trials of serious economic crimes).

For examples of mass trials, see Johnson, *supra* note 11, at 455 (noting that in August 1983, the state executed thirty murderers and rapists after they were displayed in Beijing's Workers' Stadium before 100,000 people). In October of the same year forty other convicts were shot in the head after public display. *Id.*; Ching, *China Responds to Recent Crime Wave With Swift Justice, Longer Jail Terms*, *Wall St. J.*, Aug. 4, 1981, at 34. In 1981 over 100,000 people attended mass trials. *Id.*

54. SUPPLEMENTARY PROVISIONS OF THE STATE COUNCIL FOR REHABILITATION THROUGH LABOR, 5th NPC, 12th Sess., (1979), *trans. in* PRC LAWS, 1979-1982, *supra* note 8, at 167. Provincial, municipal, and autonomous people's governments appoint committees to administer rehabilitation through labor. *Id.* para. 1. The administrative committees examine and approve those recommended for rehabilitation. *Id.* at 168-69, para. 2. The people's procuratorates have supervisory authority over the administrative committees. *Id.* at 169, para. 5. The term of rehabilitation is one to three years. *Id.* para. 4. Rehabilitation through labor applies only to persons who are not criminally liable. *Id.* at 169. Examples of these categories are persons engaged in hooliganism, larceny, or fraud and government employees who violate disciplinary rules or public order. *Id.* at 168. The administrators mandate measures of education and reform for the offenders. *Id.* at 170. The offenders are paid for their work. *Id.* at 169.

55. COHEN, THE CRIMINAL PROCESS, *supra* note 38, at 76-78; see Note, *Concepts of Law in the Chinese Anticrime Campaign*, *supra* note 50, at 1898-1902 (discussing the dichotomy between law, discipline, and administration).

56. ACT OF THE PEOPLE'S REPUBLIC OF CHINA FOR PUNISHMENT OF COUNTER-REVOLUTIONARIES (promulgated on Feb. 21, 1951), *reprinted in* 1 ZHONGHUA RENMIN ZHENGFU FALING HUIBIAN (COLLECTION OF LAWS AND DECREES OF THE CHINESE PEOPLE'S GOVERNMENT) 3, 3-5 (1953) [hereinafter COUNTERREVOLUTION ACT], *trans. in* COHEN, THE CRIMINAL PROCESS, *supra* note 38, at 299-302.

57. ACT OF THE PEOPLE'S REPUBLIC OF CHINA FOR PUNISHMENT OF CORRUPTION (promulgated on Apr. 21, 1952), *reprinted in* 3 ZHONGHUA RENMIN ZHENGFU FALING HUIBIAN (COLLECTION OF LAWS AND DECREES OF THE CHINESE PEOPLE'S GOVERNMENT) 25, 25-28 (1954) [hereinafter CORRUPTION ACT], *trans. in* COHEN, THE CRIMINAL PROCESS, *supra* note 38, at 308-11.

58. SECURITY ADMINISTRATION AND PUNISHMENT ACT (adopted on Oct. 22, 1957), *reprinted in* Xinhua [in Chinese], Feb. 22, 1980, *trans. in* F.B.I.S.—CHI, Feb. 26,

suppress counterrevolutionary activity,⁵⁹ consolidate the people's democratic dictatorship,⁶⁰ and punish counterrevolutionary criminals. To curb public corruption, the Party enacted the Corruption Act.⁶¹ The Party promulgated the SAPA to sanction minor criminal offenses.

The Party weighed the "social danger"⁶² of a criminal act to assess the appropriate degree of punishment.⁶³ Among the people class, the Party imposed administrative punishment pursuant to SAPA for relatively minor infractions.⁶⁴ SAPA authorized police, as opposed to courts, to impose less severe punishment for minor unlawful activities, such as acts that infringed upon individual interests, violated the morality of society, or other certain policies, laws, or decrees of state.⁶⁵ SAPA did not impose criminal punishment such as reform through labor (analogous to hard labor camps), imprisonment, or death sentences; rather, it imposed administrative sanctions, such as nominal fines, three to ten day detentions, and criticism-education programs.⁶⁶

1980, at L8 [hereinafter SAPA]. SAPA is still in effect. *Id.* See generally COHEN, THE CRIMINAL PROCESS, *supra* note 38, at 200-37 (discussing SAPA in detail).

59. COHEN, THE CRIMINAL PROCESS, *supra* note 38, at 299.

60. CRIMINAL LAW CODE art. 1 (PRC).

61. See COHEN, THE CRIMINAL PROCESS, *supra* note 38, at 308 (listing acts of corruption). A major focus of the "three-anti movement" was the crusade against corruption which began in 1952. *Id.* at 307. Corruption, waste, and bureaucratism comprise the "three evils." *Id.* at 313. The movement sought to create a more conscientious bureaucracy and was connected with the "five-anti movement" to obtain complete authority over private business. *Id.* at 307. The unlawful acts of bribery, tax evasion, stealing state property, cheating in workmanship and materials, and stealing state economic intelligence are known as the "five poisons". *Id.*

62. See *id.* at 325-29 (stating that the social danger of an act is the most essential characteristic of a crime). The three criteria used to measure the degree of social danger are: (1) the nature of the act; (2) the existence and amount of damage; and (3) the factors involving the actor's subjective state, primarily whether the actor acted intentionally or negligently, or what his purpose was in committing a certain act. *Id.* at 330-32.

63. *Id.* at 329. In order for a socially dangerous act to be subject to criminal punishment the actor must have committed the act either intentionally or negligently. *Id.*

64. See Note, *Concept of Law in the Chinese Anticrime Campaign*, *supra* note 50, at 1898-1901 (noting that administrative sanctions are typically punishments imposed by the police without the participation of other legal organs such as the procurate and the courts). The most important types of administrative sanctions are those of rehabilitation and punishment imposed under SAPA. *Id.*

65. COHEN, THE CRIMINAL PROCESS, *supra* note 38 (discussing minor offenses).

66. *Id.*; see M. BLECHER, *supra* note 43, at 28 (discussing criticism-education). Criticism-education occurs when an accused party engages in self-criticism and repentance under the supervision of court officials. *Id.* The courts employ various methods such as the admission of guilt to the community and work unit in which the accused lives and/or hours of repetitive writing admitting guilt, weakness, and promise to reform. *Id.*

C. POST-MAO PERIOD

The Party's thirty-year lapse in the codification of the criminal law can be attributed to Mao's bias against bureaucratization and his corresponding preference for the "mass line."⁶⁷ It also reflected the Party's historical emphasis on the societal, as opposed to the jural, model of law.⁶⁸ This societal approach, however, provided the Chinese people with virtually no understanding of, or experience with, the legal system.⁶⁹

In 1975, Deng Xiaoping became the leader of the Party.⁷⁰ Through slow and arduous efforts, the Party attempted to promote and integrate the role of law and justice into Chinese society.⁷¹ In 1978, China embarked on a plan to spur economic growth, known as the open-door policy.⁷² The open-door policy simultaneously placed greater reliance on market forces and curbed government controls by encouraging private enterprise and individual initiative.⁷³ To implement this policy the Chinese government developed a series of structural economic reforms, dubbed the four modernizations,⁷⁴ and price reform.⁷⁵ Although the

67. See H. CHIU & S. LENG, *supra* note 44, at 24-26 (discussing the theory behind the mass line); Epp, *supra* note 17, at 43 (noting that the true cause of the nonexistence of a criminal code may be attributed to the period of lawlessness during the Cultural Revolution).

68. Shua-Chuan Leng, *supra* note 1, at 205.

69. Han, *Strengthening the Legal System Is the Safeguard for Developing Democracy*, Renmin Ribao [in Chinese], Feb. 3, 1981, *trans. in* F.B.I.S.—CH1, Feb. 13, 1981, at L8.

70. See *supra* note 12 (discussing Deng Xiaoping's accession to Party leadership).

71. See H. CHIU & S. LENG, *supra* note 44, at 35-121 (discussing the role of law and the legal system under Deng).

72. See *supra* note 15 and accompanying text (discussing the open-door policy).

73. See Chao & Xiaping, *Private Enterprise in China: The Developing Law of Collective Enterprises*, 19 INT'L LAW. 1215, 1217-18 (1985) (discussing collective enterprises since 1978); Hudspeth, *The Nature and Protection of Economic Interests in the People's Republic of China*, 46 ALB. L. REV. 691 (1982) (discussing various forms of enterprises in China); Niang, *China: Corruption and Economic Crime*, 7 COMPANY LAW. 81, 81-82 (1986) (discussing problems of corruption and other economic crimes in private enterprises); Tung, *Preface: Reforms of the Economic and Management Systems in China*, 12 INT'L STUD. MAN & ORG. 8 (1982) (discussing the granting of greater autonomy for enterprises); Comment, *The Role of the Black Market in China's International Finance System*, 7 NW. U.J. INT'L L. & BUS. 833, 845-847 (1986) (discussing the government's tacit acceptance of the black market's operation); see also XUE MUQUIAO, *supra* note 3, at 25-32 (discussing the socialist transformation of private enterprise and capitalist industry).

74. See SELECTED WORKS OF DENG XIAOPING, 1975-1982 145-50 (1984) (addressing the role of the Chinese people in the four modernization's program); see also *supra* note 3 and accompanying text (discussing the history of the four modernization's program).

75. See Lubman, *Policy and Administration Unclear in China's Laws*, Asian Wall St. J., Nov. 18, 1980, at 6, (noting that in 1980 the Chinese government launched

four modernizations and the open-door policy increased international trade and investment, it also resulted in a surge of economic crime.⁷⁶

In response to the increase in economic crimes, the Party enacted the Criminal Law Code and the Criminal Procedure Code in 1980 as two measures to promote foreign trade and deter domestic criminal activity.⁷⁷ Through the enactment of the Codes, the Party intended to remedy the erosion of the legal system during the Cultural Revolution, when sham courts convicted innocent people of political transgressions.⁷⁸ Thus, Chinese criminal law began to evolve from a tool under Mao that supported class struggle⁷⁹ to an instrument under Deng Xiaoping that enhances economic modernization.⁸⁰

1. *The Criminal Law Code and the Criminal Procedure Code*

Notwithstanding the Criminal Law Code's and Criminal Procedure

reforms to bring greater autonomy to enterprises and localities). The government also experimented with its first price reforms. *Id.*; see also *The Provisional Regulations Governing Price Control*, Xinhua [in Chinese], Aug. 22, 1982, *trans. in* F.B.I.S.—CHI, Aug. 25, 1982, at K7 (finding that the State Council adopted three different price reforms: prices fixed by the state, prices fixed by the enterprise that are regulated by state agencies, and trade fair prices). State-fixed prices were the principal form. *Id.*

76. See *supra* note 12 and accompanying text (discussing the increase in economic crime); Bennett, *Executions on Rise as China Battles Crime*, *Asian Wall St. J.*, Aug. 24, 1983, at 2 (noting that certain Chinese officials link the tremendous increase in economic crime to relaxation of economic controls and the importation of Western influence); see also Reuter, *Press Warns of Danger to Reforms*, *South China Morning Post*, June 10, 1988, at 8 (quoting various Chinese newspapers denouncing the import of Western-style individualism).

77. Foster, *Codification in Post-Mao China*, 30 *AM. J. COMP. L.* 395, 410 (1982).

78. See 1980 REPORT, *supra* note 50, at 43 (stating that the "Gang of Four . . . decided the nature of a case first, looked for data, willfully cooked up charges, and vigorously obtained confessions by compulsion and then gave them credence"). During the Cultural Revolution, all levels of the People's Courts were "smashed." *Id.* During this period, the amount and level of criminal activity is difficult to ascertain because the court system was in disarray. *Id.* The use of investigative methods and evidence was completely arbitrary. *Id.*; see also Peng Zhen, *supra* note 1, at 8 (stating that more than thirty drafts on the Criminal Law Code existed before the Cultural Revolution). The 33rd and final draft was put into force beginning on January 1, 1980. *Id.*

79. See XUE MUQIAO, *supra* note 3, at 267-88 (discussing class struggle and contradictions among the Chinese people under the rule of Mao Tsetung).

80. See COMMUNIQUE OF THE THIRD PLENARY SESSION OF THE 11TH CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF CHINA, *Beijing Rev.*, Dec. 29, 1978, at 6, 10-11 (observing that the official focus is shifting from class struggle to economic modernization); Ching, *Chinese Communist Party's New Charter Puts Economic Goals Above Class Struggle*, *Wall St. J.*, Sept. 9, 1982, at 30 (noting the 1982 Chinese Communist Party Constitution stated that "[t]he principal contradiction in Chinese society is that between the people's growing material and cultural needs and the backward level of our social production"); see also Foster, *supra* note 77, at 410 (arguing that one of the main functions of codes is to advance foreign economic relations).

Code's emphasis on economic modernization, their foundations are still derived from the Maoist concepts of counterrevolutionary crimes⁸¹ and crimes of corruption.⁸² The categories of criminal perpetrators under Mao, however, have changed.⁸³ Before 1978, Mao categorized criminals who committed acts against the state as belonging to the enemy class and as the "dregs of society."⁸⁴ Since 1978, however, the Supreme People's Court classifies the majority of criminals as "working people."⁸⁵

Four of the eight chapters of the Criminal Law Code discuss economic crimes. Chapter three, entitled Crimes of Undermining the Socialist Economic Order, addresses crimes such as speculation,⁸⁶ smuggling,⁸⁷ counterfeiting,⁸⁸ and tax evasion.⁸⁹ Embezzlement⁹⁰ and

81. See CRIMINAL LAW CODE arts. 90-104 (PRC) (defining counterrevolutionary crimes); *Popularization and Propaganda Lecture (No. 32) on PRC Criminal Law: What is a Counterrevolutionary Crime?*, Renmin Ribao [in Chinese], May 2, 1983, *trans. in* F.B.I.S.—CHI, May 5, 1983, at K8 (defining counterrevolutionary crime as requiring motive and purpose to overthrow the people's democratic dictatorship and the socialist system); REPORT ON THE WORK OF THE SUPREME PEOPLE'S COURT, 6th NPC, 1st Sess., (June 7, 1983), *trans. in* F.E.—CHI No. 7372, at C3 [hereinafter 1983 REPORT] (noting that counterrevolutionary crimes made up only 0.5% of all crimes in 1982).

82. CRIMINAL LAW CODE arts. 116-30 (PRC) (defining crimes which "undermine the socialist economic order").

83. 1983 REPORT, *supra* note 81, at C3.

84. *Id.*

85. *Id.*

86. CRIMINAL LAW CODE arts. 117-19 (PRC). It is a crime to speculate on the regulated areas of monetary affairs, foreign exchange, gold and silver, or the administration of industrial and commercial affairs. *Id.* art. 117.

Those involved in cases of smuggling and/or speculation on a regular basis are subject to a harsher sentence of three to ten years. *Id.* art. 118 (amended 1982). The 1982 amendment changes the minimum penalty to ten years and the maximum penalty to life imprisonment or death. RESOLUTION FOR SEVERELY PUNISHING OFFENDERS WHO DO GREAT DAMAGE TO THE ECONOMY, 5th NPC, 22nd Sess., (adopted Mar. 8, 1982) (effective Apr. 1, 1982), *reprinted in* Xinhua [in Chinese], Mar. 9, 1982, *trans. in* F.B.I.S.—CHI, Mar. 10, 1982, at K1 [hereinafter 1982 RESOLUTION ON ECONOMIC CRIMES].

State functionaries involved in the crimes of smuggling or speculation are subjected to heavier punishment which is not specified in the Code. CRIMINAL LAW CODE art. 119 (amended 1982) (PRC). The amendment defines severe punishment for a state functionary as a minimum penalty of ten years with a maximum of life imprisonment or death. *Id.*

87. CRIMINAL LAW CODE arts. 116, 118-19 (PRC). It is illegal to engage in smuggling in violation of the customs law. *Id.* art. 116.

88. *Id.* arts. 120, 122-24. It is illegal to counterfeit or resell ration coupons for the purpose of profit, *id.* art. 120; to counterfeit or traffic in counterfeited national currency, *id.* art. 122; to counterfeit checks, share certificates, or other valuable securities, *id.* art. 123; to counterfeit tickets for transportation, postage stamps, tax stamps or invoices for profit, *id.* art. 124.

89. *Id.* art. 121. Persons evading or refusing to pay taxes in violation of the tax law and regulations commit a crime. *Id.*

extortion,⁹¹ considered to be crimes of property, are addressed in chapter five. Chapter six concerns crimes of obstructing the administration of public order, including such acts as forging, altering, stealing, or destroying official documents,⁹² certificates or seals of state organs, enterprises, institutions, or people's organizations.⁹³ Finally, chapter eight covers crimes of dereliction of duty, primarily by state functionaries, making it illegal to accept or offer bribes,⁹⁴ divulge state secrets,⁹⁵ and neglect official duties.⁹⁶

The Criminal Law Code and Criminal Procedure Code proved inadequate at the outset. Ineffectual results arose from ambiguities in the Criminal Law Code concerning the definition of crimes of embezzlement, speculation, and bribery. In response, the Supreme People's Court and Supreme People's Procuratorate issued a joint circular defining acts and elements necessary to constitute an economic crime.⁹⁷ In

90. *Id.* art. 155 (amended 1982). It is a crime to exploit a government position to embezzle public property. *Id.* Plundering "industrial or mining enterprises, banks, shops, warehouses, or other articles of public property" is also a counterrevolutionary crime. *Id.* art. 100(2).

91. *Id.* art. 154. Extortion of money or other public or private property by blackmail is a crime. *Id.*

92. *Id.* art. 100(2). Stealing state records is also a counterrevolutionary crime. *Id.*

93. *Id.* art. 167. Forgery or illegal use of state documents, seals, or certificates is a crime. *Id.*; see *15 Major Economic Swindling Cases Unearthed in Shenzhen Last Year*, Ta Kung Pao [in Chinese] Jan. 15, 1986, *trans. in* F.B.I.S.—CHI, Jan. 17, 1986, at W3 (stating that the official Chinese seal of a company, also known as a *chop*, makes the contract binding).

94. CRIMINAL LAW CODE art. 185 (amended 1982) (PRC). State functionaries who accept bribes shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. *Id.* The funds or articles received as bribes shall be confiscated, and public funds or articles shall be recovered. *Id.* More serious losses carry a sentence of fixed-term imprisonment of not less than five years. *Id.* Those offering or introducing bribes to state functionaries are subject to up to three years fixed-term imprisonment or criminal detention. *Id.* Under the amendment, state functionaries will be punished for bribery under article 155, and in serious cases, will receive life imprisonment or death. *Id.*

95. *Id.* art. 186. State functionaries who divulge important state secrets, in violation of state laws and regulations on the protection of secrets, are sentenced to fixed-term imprisonment of not more than seven years, criminal detention, or deprivation of political rights. *Id.* If a person who is not a state functionary commits the crime mentioned in the preceding paragraph, he shall be punished in light of the circumstances and in accordance with the provisions of the preceding paragraph. *Id.*

96. *Id.* art. 187 (amended 1982). State functionaries who neglectfully cause public property or the interests of the state and the people to suffer heavy losses are sentenced to fixed-term imprisonment of not more than five years or criminal detention. *Id.* The amendment calls for a minimum ten year penalty and a maximum penalty of life imprisonment or the death penalty. *Id.*; see *Heighten Our Vigilance and Strengthening the Work of Keeping Things Secret*, Renmin Ribao, Apr. 11, 1980, *trans. in* F.B.I.S.—CHI, Apr. 11, 1980, at L8-9, L11 [hereinafter *Heighten Our Vigilance*] (stating that a form of negligence is found in not guarding party and state secrets).

97. *Document Clarifies Bribery Law*, China Daily, Aug. 3, 1985, at 4.

addition, in reaction to a surge of criminal activity in 1981, the amendment, entitled Decision on the Question of Approval of the Death Sentence, imposed harsher sentences, including the death sentence, on criminal activity.⁹⁸

Similarly, in 1982, to combat the increase in corrupt activity, the National People's Congress (NPC) amended the Criminal Law Code by adopting two resolutions, the 1982 Resolution on Economic Crimes and the Resolution on Severely Punishing Criminals Who Gravely Endanger Public Security.⁹⁹ These resolutions substantially increased criminal penalties for economic crimes. For example, whereas the maximum penalty for those convicted of committing economic crimes was a sentence of ten years, the new resolutions set the minimum penalty for economic crimes at ten years with a maximum of life imprisonment or even death for serious crimes of corruption.¹⁰⁰ In contrast, the NPC

98. See DECISION ON THE QUESTION OF APPROVAL OF THE DEATH SENTENCE (adopted on June 10, 1981), reprinted in Renmin Ribao, June 11, 1981, at 1, trans. in F.B.I.S.—CHI, June 11, 1981, at K4 [hereinafter DEATH SENTENCE DECISION] (stating that the Decision amended articles 144 and 145 of the Criminal Procedure Code). Prior to 1981, the Criminal Procedure Code required the Supreme People's Court to approve the death sentence. *Id.* The crimes that no longer needed Supreme Court approval from 1981 through 1983 were murder, robbery, rape or arson, the use of explosives or poisons, and tampering with means of transportation or electrical equipment. *Id.*; REPORT ON THE WORK OF THE SUPREME PEOPLE'S COURT, 5th NPC, 4th Sess., (Dec. 7, 1981), reprinted in Xinhua [in Chinese], Dec. 15, 1981, trans. in F.B.I.S.—CHI, Dec. 21, 1981, at K1 [hereinafter 1981 REPORT] (noting that from October 1980 through September 1981, 39,000 cases of the above criminal offenses were tried and punished). Wang Hanbin on Law Revisions, Xinhua [in Chinese], Sept. 2, 1983, trans. in F.B.I.S.—CHI, Sept. 6, 1983, at K13 (clarifying the reasons behind the Death Sentence Decision). Wang Hanbin was Secretary General of the NPC Standing Committee and Vice Chairman of the Legislative Affairs Commission of the NPC Standing Committee. *Id.* One of the main reasons behind the Death Sentence Decision was the rapid increase in crimes such as murder, rape, and robbery which imperiled the security of Chinese society and threatened the public order. *Id.* The Decision was important because it directly allowed higher people's courts of provinces, municipalities, and autonomous regions to impose the death penalty without prior approval of the Supreme People's Court. *Id.* But see Jochnowitz, *Punishment Chinese-style: [B]eware [sic] the [R]ed [C]heck [M]ark*, CHRISTIAN SCI. MONITOR, June 25, 1986, at 14 (estimating that China has executed over 20,000 people for crimes since 1983). The author argues that the death sentence for economic crimes is too severe. *Id.*

99. 1982 RESOLUTION ON ECONOMIC CRIMES, *supra* note 86, at K1; RESOLUTION ON SEVERELY PUNISHING CRIMINALS WHO GRAVELY ENDANGER PUBLIC SECURITY, 6th NPC, 2d Sess., (Sept. 2, 1983), reprinted in Xinhua [in Chinese], Sept. 2, 1983, trans. in F.B.I.S.—CHI, Sept. 6, 1983, at K2 [hereinafter 1983 RESOLUTION ON ECONOMIC CRIMES ENDANGERING PUBLIC SECURITY].

100. See 1981 REPORT, *supra* note 98 (noting that crimes of corruption were specifically mentioned in the 1981 temporary revision, but remained subject to approval); Wren, *Crime and Capital Punishment in China*, N.Y. Times., Nov. 20, 1983, at E9 (discussing the use of capital punishment in the anticrime campaign). Embezzlers are also subject to the death penalty. *Id.* Chinese tradition emphasizes society over the individual; thus, Chinese are not disturbed by the death penalty. *Id.* Western sources

utilized an amnesty program and granted lighter sentences to criminals who surrendered themselves to the police by May 1, 1982, prior to the imposition of the new regulations.¹⁰¹ To punctuate the Party's zeal to strengthen criminal penalties, in 1986 it applied the amended death penalty sentence to Party members and their children who engaged in illegal activities for private gain.¹⁰²

These laws and statutory changes created a legal foundation for increased control of economic crime, albeit an unsettled foundation. For example, when the Party made the statutory changes in sanctioning and sentencing, it failed to specify the illegal act constituting a crime or a minor infraction of social order. To refine the law, the Party formulated policies through Maoist-type anticorruption campaigns.¹⁰³ The policies of these political campaigns determined the degree of severity of the crimes and the level of punishment.¹⁰⁴ Inherent conflicts between the Criminal Law Code and the anticorruption campaigns, however, surfaced in the areas of implementation and enforcement due to the absence of a legal system.

estimate over 5,000 executions in 1983. *Id.*; see also Herbst, *A Legal Opinion*, CHINA TRADE REP., Dec. 1983, at 13 (warning of the emphasis placed on laws and the legal system in light of the true lawmakers—the Party). Although the courts approve the death sentence, the Party is the true driving force behind capital punishment and the execution of over 5,000 persons in 1983. *Id.*

101. See 1982 RESOLUTION ON ECONOMIC CRIMES, *supra* note 87, at K2 (revealing the new regulations); REPORT ON THE WORK OF THE SUPREME PEOPLE'S PROCURATORATES, 5th NPC, 5th Sess. (Dec. 6, 1982), reprinted in Renmin Ribao [in Chinese], Dec. 17, 1982, at 1, 3, *trans. in* F.B.I.S.—CHI, Dec. 23, 1982, at K21, K22 [hereinafter 1982 CHIEF PROCURATOR REPORT] (stating that 44,874 people voluntarily admitted to committing economic crimes); see *infra* notes 104-10 and accompanying text (discussing the 1982 anticrime campaign and NPC resolutions).

102. Southerland, *China Warns on Economic Crime*, Wash. Post, Jan. 20, 1986, at A12. The state extended the death penalty to high officials shortly after a reignited anticorruption campaign. *Id.* The effect was to signal the gravity of corruption by "kill[ing] one to warn a hundred." *Id.*; see Hong, *supra* note 6, at 86-89 (blaming Deng's organizational approach for the corruption of high-ranking officials and their children). A new elite has emerged out of the period of modernization. *Id.* at 87; *Economic Criminals Executed in China*, J. Commerce, Jan. 24, 1986, at 5A (reporting the first executions of economic criminals after senior authorities officially applied the penalty to government officials). In January 1989, in Shanghai 10,000 people attended a mass trial of 30 criminals convicted of perpetrating an economic crime. *Id.* Two received a death sentence and the others received heavy prison terms. *Id.* The Shanghai court sentenced one person for embezzling "important industrial materials" without defining important. *Id.* The other was sentenced for swindling \$30,000 while misrepresenting himself as an overseas Chinese businessman. *Id.*

103. See *infra* notes 206-36 and accompanying text (discussing anticorruption campaigns).

104. See Note, *Concepts of Law in the Chinese Anticrime Campaign*, *supra* note 50, at 1902 (discussing law versus policy in the PRC).

2. Monitoring and Enforcement

From 1954 until 1980, Party committees tried cases and rendered decisions.¹⁰⁵ In 1980, the Supreme People's Court issued a report abolishing this practice.¹⁰⁶ During the Cultural Revolution, state enterprises became disorganized.¹⁰⁷ As a result, the Chinese people took an active role in the detection and reporting of illegal activities by writing letters to the Supreme People's Procuratorate¹⁰⁸ or making phone calls to corruption hotlines.¹⁰⁹ In 1979, the central role of the Party in monitoring crime and enforcing criminal sanctions weakened as the Party appointed various agencies and created several systems to monitor and enforce criminal activity, specifically economic criminal activity.¹¹⁰ The

105. *Supreme Court President Discusses Legal System Reform*, XINHUA [in Chinese], Aug. 25, 1980, *trans. in* F.B.I.S.-CHI, Aug. 27, 1980, at L7.

106. *See id.* at L7 (stating that in a report given at a Beijing Municipal Conference on judicial work for criminal law and Criminal Procedure Code law, Jiang Hua called for the abolition of Party committees' practice of trying and rendering decisions on criminal cases); Haocheng, *Party Committee Could Not Continue Examining and Approving Cases*, Beijing Ribao [in Chinese], Jan. 23, 1981, *trans. in* F.B.I.S.-CHI, Feb. 2, 1981, at L8, L9 (stating that public committees should lose their power to examine and approve cases).

107. *See* Cronin, *The Changing Face of Justice*, U.S.-CHINA REV., May-June 1980, at 12-13 (noting the assets of state organizations and collectives were not adequately protected and monitored). Signed contracts were not legally binding. *Id.*

108. *See id.* at 12 (noting the Supreme People's Procuratorate, the highest organ of legal supervision in China, received over 15,000 letters monthly divulging wrongful or illegal activities).

109. *China Introduces Reporting Centers, Guidelines on Corruption*, CHINA INFORMATICS, Aug. 18, 1988, at 293 (announcing that the Ministry of Supervision (MOS) set up corruption reporting centers). The MOS provides a phone number (#2025391) on a 24-hour basis for Chinese and foreigners wishing to report suspicions of graft, bribery, blackmail, extortion, or any other illegal activities committed by government officials. *Id.* The report also provides guidelines on when a government official may collect commissions or receive bonuses. *Id.* at 12-13.

110. *See* ZHONGHUA RENMIN GONGHEGUO FAYUAN ZUZHI FA (THE ORGANIC LAW OF THE PEOPLE'S COURTS OF THE PEOPLE'S REPUBLIC OF CHINA) (promulgated on July 5, 1979, and effective on Jan. 1, 1980), *reprinted in* Xinhua, July 5, 1979, *trans. in* *Organic Law for People's Courts*, F.B.I.S.-CHI, July 20, 1979, at supp. 20 [hereinafter ORGANIC LAW OF THE PEOPLE'S COURTS] (stating that the court system is responsible for the trial and sentencing of criminals); ZHONGHUA RENMIN GONGHEGUO RENMIN JIANCHAYUAN ZUZHI FA (THE ORGANIC LAW OF THE PEOPLE'S PROCURATORATES OF THE PEOPLE'S REPUBLIC OF CHINA) (promulgated on July 5, 1979, and effective as of Jan. 1, 1980), *reprinted in* Xinhua, July 5, 1979, *trans. in* *Organic Law for People's Procuratorates*, F.B.I.S.-CHI, July 27, 1979, at supp. 27 [hereinafter ORGANIC LAW OF THE PEOPLE'S PROCURATORATES] (dictating the procuratory system's importance). The procuratory system is responsible for investigating criminal cases, supervising and monitoring the police, initiating prosecutions, reviewing trial procedures, carrying out judgments, and operating correctional facilities. *Id.*; Silk, *Economic Crime in China*, CHINA BUS. REV. Jan.-Feb. 1988, at 25 (discussing the major economic crimes and outlining the organizations which monitor and enforce economic crimes). For example, the public security apparatus is responsible for the uncov-

establishment of these new agencies has prompted an effort to create links between law and policy, a difficult feat considering the immense power given to Party committees.¹¹¹

In a further effort to balance the power between the Party and the judiciary, the revised 1982 Constitution provides for independent judicial power.¹¹² In reality, however, the judicial branch exercises very little independent initiative because it is obligated to follow the Party's directives, issued through anticrime and anticorruption campaigns. Thus, the provision granting independent judicial power remains one of form and little substance.¹¹³

3. *The Role of Lawyers in the Legal System*

Economic modernization and the subsequent development of the so-

ering and investigating crimes. *Id.* at 28. Public security officers also impose administrative sanctions. *Id.* The State Administration for Industry and Commerce is responsible for uncovering individuals and enterprises earning illegal profits from business transactions. *Id.* The China Audit Administration was created in September 1983 to monitor state tax collection and audit the finances of Chinese enterprises and units and their use of state funds. *Minister on Combatting Corruption*, Xinhua [in Chinese], Aug. 21, 1987, reprinted in F.B.I.S.—CHI No. 163, Aug. 24, 1987, at 13.

See *New Ministry Fights Corruption*, 39 BEIJING REV., Sept. 28, 1987, at 8 (discussing the creation of the MOS in 1987 to combat corruption, bribery, and malfeasance of government employees). The MOS supervises the performance of government departments, government workers, and government-employed factory managers. *Id.* It also supervises contracts signed with foreigners and monitors the economic information revealed to foreigners to prevent the divulgence of state secrets. *Id.* The MOS is currently drafting a series of regulations concerning government officials, declaration of their income, citizen's rights to inform against state functionaries, and punishments for officials involved in corruption, bribery, and dereliction of duty. *Id.*; *China Introduces Reporting Centers, Guidelines on Corruption*, *supra* note 109, at 293 (reporting that the MOS set up Corruption Reporting Centers). The Centers aid individuals in reporting acts of corruption in state and Party-run departments. *Id.* In August 1988, a corruption hotline was introduced to crack down on corruption. *Id.*

111. *Supreme Court President Discusses Legal System Reform*, Xinhua, [in Chinese], Aug. 25, 1980, trans. in F.B.I.S.—CHI, Aug. 27, 1980, at L7. In 1980, the Supreme People's Court issued a report to abolish this practice of Party Committees trying cases and rendering decisions. *Id.*; see *State Handles Over 2 Million Economic Violations*, Xinhua [in Chinese] Oct. 22, 1986, trans. in F.B.I.S.—CHI, Oct. 27, 1986, at K13 (noting that from 1984 to 1986, the Industry and Commerce Administration Department investigated and reported 2.09 million cases of speculation, manufacture and marketing of counterfeit commodities, and smuggling). This Department is an administrative body and any economic infractions are subject to penalties under SAPA. *Id.*

112. CONST. OF THE PEOPLE'S REPUBLIC OF CHINA art. 126 (1982) (providing independent judicial power to the people's courts without state or individual interference).

113. See Lubman, *China Lays Down the Law as Legal System Modernized*, CHRISTIAN SCI. MONITOR, Feb. 10, 1983, at 11 (stating that the courts in effect have little autonomy); Herbst, *supra* note 53, at 6 (noting skepticism in the independent role awarded the courts under the 1982 Constitution).

cialist legal system¹¹⁴ brought an increase in the importance of lawyers,¹¹⁵ a class the Party had castigated during the Cultural Revolution.¹¹⁶ In an effort to give the legal system credibility, the Party promoted the legal profession by making public statements urging its reestablishment.¹¹⁷ To achieve this goal, in 1982 the Party promulgated the Regulations on Lawyers,¹¹⁸ strengthening the legal system then composed of the people's courts,¹¹⁹ the prosecutorial organs,¹²⁰ and the public security (police) system.¹²¹

The new role assigned to lawyers, however, is confined to legal issues arising from foreign investment. Their role in the criminal justice system remains restricted. The NPC placed great emphasis on training

114. Peng Zhen, *Report on the Work of the NPC Standing Committee*, BEIJING REV., Sept. 29, 1980, at 23, 25; see Pitney, *The Role of Legal Practitioners in the People's Republic of China*, 24 STAN. J. INT'L L. 323, 324 (1988) [hereinafter *Legal Practitioners*] (providing an extensive analysis of the legal profession since 1978).

115. See Schatz & Silkenat, *Signals from China's Legal System*, NAT'L L.J., Feb. 18, 1980, at 35 (stating that those responsible for the implementation of the modernization policy seek reliance on laws to protect them from radical political shifts).

116. Gellhorn, *China's Quest for Legal Modernity*, 1 J. CHINESE L. 7 (1987); see Gelatt, *Resurrecting China's Legal Institutions*, Asian Wall St. J., Mar. 29, 1980, at 4 (stating that until 1957 there were approximately 3,000 lawyers practicing in China). With the onset of the "anti-rightist" movement in 1957 came the demise of the legal profession. *Id.* Most lawyers were sent to labor camps. *Id.*; Yu Xiangyang, *Discussing the Lawyer System*, Dazhong Ribao [in Chinese], Sept. 3, 1980, trans. in J.P.R.S.—CHI No. 76910, Dec. 1, 1980, at 65 (observing that the "Gang of Four" delivered the final blow to the legal system when it eliminated the public security organs, the procuratorial organs, and the people's courts); see also Vice Minister Wang [of Ministry of Justice] *Notes Shortage of Lawyers*, Xinhua [in Chinese], Oct. 29, 1980, trans. in F.B.I.S.—CHI, Oct. 30, 1980, at L1 (stating that in 1980 China had only 2,000 lawyers). The goal of the Ministry of Justice was to have one lawyer per every 10,000 city dwellers and 50,000 peasants by 1985. *Id.*; *The Role of Lawyers*, BEIJING REV., Feb. 15, 1982, at 9 (noting that by 1982, China had 5,500 full-time and 1,300 part-time lawyers).

117. REPORT OF THE WORK OF THE SUPREME PEOPLE'S PROCURATORATE, 5th NPC, 3rd Sess., (Sept. 2, 1980), reprinted in Xinhua [in Chinese], Sept. 16, 1980, trans. in F.B.I.S.—CHI, at 44, 45 [hereinafter 1980 CHIEF PROCURATOR REPORT] (emphasizing the need for a stronger legal system); see H. CHIU & S. LENG, *CRIMINAL JUSTICE IN POST-MAO CHINA* 47, 69-71 (1985) (discussing the role of criminal justice and criminal procedure).

118. ZHONGHUA RENMIN GONGHEGUO LUSHI ZHANXING TIAOYE (PROVISIONAL REGULATIONS ON LAWYER'S OF THE PEOPLE'S REPUBLIC OF CHINA) art. 13 (adopted on Aug. 26, 1980, and effective on Jan. 1, 1982), trans. in *China Reconstructs Her Legal System*, 9 INT'L BUS. L. 255 (1981) [hereinafter *PRACTITIONERS' REGULATIONS*]. The Ministry of Justice is responsible for overseeing the "lawyer's system." *Id.* art. 13; see Gelatt, *Legal Profession and Lawyers Start to Reemerge in China*, Asian Wall St. J., Sept. 25, 1980, at 4 (discussing the importance and purpose of the adopted 1980 Provisional Regulations for Lawyers in the PRC).

119. ORGANIC LAW OF THE PEOPLE'S COURTS, *supra* note 110, at supp. 20.

120. ORGANIC LAW OF THE PEOPLE'S PROCURATORATES, *supra* note 110, at supp. 27.

121. *Legal Practitioners*, *supra* note 114, at 325.

lawyers to practice in the field of business, particularly with respect to foreign investment.¹²² According to the Chinese government, the role of the lawyer is to promote corporate profitability¹²³ and economic reforms.¹²⁴ In civil cases or disputes,¹²⁵ lawyers are responsible for drafting factory regulations, detecting problems in poorly drafted contracts, eliminating the effects of management deficiencies, exposing white-collar crime, and avoiding inequities in contract negotiations.¹²⁶ Lawyers in China are also being trained to practice dispute resolution, legal interpretation of documents, and business planning.¹²⁷

Conversely, lawyers maintain a relatively weak role in the criminal system, limited to representing the interests of the state¹²⁸ as opposed to representing the accused.¹²⁹ When a lawyer is involved in a criminal trial, his or her sole function is to argue for mitigation of the offender's sentence; guilt is usually determined before the trial begins.¹³⁰ Moreover, in the field of criminal law, police and courts still view lawyers with hostility¹³¹—a hostility that is embedded in historical prejudices and which is likely to increase as more people are prosecuted for economic crimes.¹³²

122. *Id.* at 357-62.

123. *Id.* at 324. In 1988, more than 40,000 corporations had legal counsel. *Id.*

124. *See id.* at 324 (noting the role of lawyers is not, as in most Western countries, to safeguard the rights of the individual or to help maintain public order). The anticrime campaign in the early 1980s accelerated the hearing of criminals, thereby usurping control from the attorney. *Id.* at 386.

125. *See* 1981 REPORT, *supra* note 98, at K4 (stating that by 1981, economic courts had been established at all higher people's courts and at 293 intermediate courts to handle economic disputes). In the same year, 14,600 economic cases were tried. *Id.*

126. *Legal Practitioners*, *supra* note 114, at 367.

127. *Id.* at 369; *see* Yu Xiangyang, *supra* note 116, at 66 (emphasizing the major role of lawyers in settling economic disputes).

128. PRACTITIONERS' REGULATIONS, *supra* note 118, art. 1. "A Lawyer is the nation's legal practitioner . . ." *Id.* at 255.

129. CRIMINAL PROCEDURE CODE art. 27 (PRC). Article 27 does not mandate the courts to appoint a defender. *Id.* With the absence of the right to counsel, the provision that the court must notify a defender no later than three days before trial severely hampers the attorney's ability to represent the defendant or accused. *Id.* art. 110. The problem is compounded further by the Public Security officials' right to incarcerate a suspect without formal arrest for up to a two month period before deciding whether to try the case. *Id.* art. 92.

130. *Legal Practitioners*, *supra* note 114, at 365; Schatz & Silkenat, *supra* note 115, at 13 (noting that if the defendant does not admit guilt, then the defense counsel is required to persuade him or her to do so). Immediate admission of guilt eliminates the need for a fact-finding process, thereby hindering the determination of the source of an economic crime. *Id.* The sources include financial status and market influences and pressures on the individual. *Id.*

131. *Legal Practitioners*, *supra* note 114, at 346-47.

132. *Id.* at 347. Moreover, the very system that the Chinese people already distrust is creating more opportunity for crime, while neglecting the Chinese institutions created to protect socialist ideology from bourgeois influence. *Id.*

II. ECONOMIC CRIMES

A. GEOGRAPHICAL LOCATION OF ECONOMIC CRIMES—SPECIAL ECONOMIC ZONES

After launching the open-door policy in 1978, the Chinese government began to implement a plan that involved choosing certain regions in China as Special Economic Zones (SEZs or zones) for fostering foreign investment. On May 16, 1980, the government officially created four such zones.¹³³ The regions are Shenzhen, Zhuhai, Shantou of Guangdong Province, and Xiamen of Fujian Province. Hainan Island became the fifth SEZ in 1987.¹³⁴

As the Chinese government created the SEZ, officials in Guangdong Province, where three of the five zones are located, simultaneously reported a surge of economic criminal activity.¹³⁵ The anticorruption campaigns did not curb economic criminal activity; instead, crimes

133. Zheng, *Law and Policy of China's Special Economic Zones and Coastal Cities*, 8 N.Y.L. SCH. J. INT'L & COMP. L. 193, 196 (1987) [hereinafter Zheng, *China's SEZs*] (providing a detailed legal analysis of the SEZ, Economic and Technological Development Zones (ETDZ), and "open regions" in the PRC).

134. *Id.* In an effort to relax further the restrictions on economic expansion, the Chinese government broadened the regulations for existing SEZs and created ETDZs in major coastal cities. *Id.* at 197. Thirteen ETDZs exist as of mid-1987. *Id.* The ETDZs were established mainly to reduce restrictions and regulatory control over foreign trade. *Id.* at 197. Most ETDZs have their own laws and regulations like the SEZs. *Id.* at 262-65. The SEZs and ETDZ created market-oriented economic areas with the fundamental goal of attracting foreign investment. *Id.* at 199-262 (discussing the characteristics of SEZs and their legal structure). The status of preferential treatment is the main difference between the SEZs and ETDZs. *Id.* SEZs enjoy preferential treatment for both the service and industrial sectors while ETDZs receive preferential treatment only for enterprises involving industrial growth. *Id.* at 263.

Beginning in 1984, the Chinese government granted thirteen coastal cities preferential treatment for foreign investments. Zheng, *supra* note 133, at 276-79. They are Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Lianyungang, Nantong, Shanghai, Wenzhou, Fuzhou, Guangzhou, Zhanjiang, and Beihai. *Id.* The four major cities include Dalian, Tianjin, Shanghai, and Guangzhou. *Id.* These regions enjoy much greater leniency on the number and volume of foreign investment projects that they may undertake without the usual requirement of obtaining authorization and review from the national government. *Id.*; see *id.* at 276 (noting that Tianjin and Shanghai are allowed to approve foreign investment projects not exceeding U.S. \$30 million, whereas Guangzhou and Dalian may approve projects up to U.S. \$10 million). The remaining nine are permitted to approve foreign business agreements up to U.S. \$5 million. *Id.*

135. See Bonavia, *supra* note 15, at 38 (stating that the Guangdong province has one of the highest smuggling rates because of its close proximity to Hong Kong and Macau). In an effort to curb smuggling activities, the Guangdong Provincial Government enacted twelve measures. *Id.*; see also *Strike Resolute Blows at Economic Criminals*, Nanfang Ribao [in Chinese], June 15, 1980, at 1, trans. in J.P.R.S.—CHI No. 76014, July 9, 1980, at 94 (noting that [the] grafters and embezzlers very often put a thousand, ten thousand yuan, or larger amounts of capital and goods into their private pockets to squander).

such as bribery,¹³⁶ smuggling, speculation, and foreign exchange arbitrage became more widespread in these areas.¹³⁷ To eliminate this corrupt activity, the procuratorial organs launched an awareness campaign emphasizing the negative effects of corruption on the economy.¹³⁸ Government officials specifically emphasized that economic crimes threatened the four modernizations.¹³⁹ Although it is difficult to ascertain the impact of such awareness campaigns, reports of economic criminal activity in the zones throughout the 1980s continued to increase three times faster than in non-SEZ areas.¹⁴⁰

The SEZs enacted legislation to curb the increase in the crime rate.¹⁴¹ For example, the Shenzhen Regulations stipulate that "illegal

136. See 1980 REPORT, *supra* note 50 (stating that there were 66 major corruption cases in Shenzhen, forty of which involved bribes involving over 10,000 yuan).

137. Li Dongming, *Crime in the Shenzhen and Zhuhai Special Economic Zones*, 4 SHEHUI [SOCIETY] 8 (Aug. 20, 1985) [in Chinese], *trans. in* J.P.R.S.—CHI No. 86033, Apr. 25, 1986, at 48, 50-52. The increase in smuggling activity is attributed to the transition from state-owned industries to more collectivized industries and inefficient management and accounting systems. *Id.* In addition, the open-door policy, which allows freer access to these areas, makes smuggling possible. *Id.* The rise in the establishment of joint venture and foreign-owned enterprises, the influx of foreigners to the SEZ, the growing availability of foreign exchange and foreign exchange certificates, and the profit differential between the market and state-controlled rates of exchange, are the prevailing factors for foreign currency arbitrage in the SEZ. *Id.*

138. See *Firmly Implement the Open-Door Policy, Firmly Strike at the Criminal Activities in the Economic Sphere*, Fujian Ribao [in Chinese], Mar. 11, 1982, *trans. in* F.B.I.S.—CHI, Mar. 24, 1982, at 3-4 (noting that a SEZ, the Fifth Provincial Congress of Fujian, called for particular attention to "the struggle between capitalist corrosion and socialist anti-corrosion"). The SEZ employ more flexible measures under the open-door policy and, therefore are more susceptible to crimes such as smuggling, illegal foreign exchange, speculation and profiteering, soliciting, and accepting bribes. *Id.*

139. *Strike Resolute Blows at Economic Criminals*, *supra* note 135, at 94. Economic crimes "corrupt[ed] [the] social atmosphere, corrode[d] and poison[ed] the ideology of the people, and effect[ed] the consolidation of the proletarian regime." *Id.* The campaign characterized economic criminals as "maggots that devour the people's property." *Id.* at 94-95.

140. Li Dongming, *supra* note 137; see also Zheng, *China's SEZs*, *supra* note 133, at 207-08, n.43 (discussing economic crimes in the SEZ). In 1986, an official of the Ministry and Foreign Economic Relations and Trade wrote:

For the past few years, SEZs under the guise of "specialty" are [a] mishmash of good and bad. Many individuals, units, [and] paper companies made use of all unjust means and methods of speculation and profiteering to pocket money to the detriment of the public interest. For instance, purchasing state-subsidized export at low price[s] and reselling for extraordinary profits . . . making many otherwise profitable commodities losing [sic] money by reducing price and competing with each other, resulting in many of our long standing customers unable [sic] to conduct normal trade with us. *Id.*

141. RESOLUTION AUTHORIZING THE PEOPLE'S CONGRESSES OF GUANGDONG AND FUJIAN PROVINCES AND THEIR STANDING COMMITTEES TO FORMULATE SEPARATE ECONOMIC REGULATIONS FOR THEIR RESPECTIVE SPECIAL ECONOMIC ZONES (adopted Nov. 26, 1981), *reprinted in* PRC LAWS, 1979-1982, *supra* note 8, at 255 (granting special status and law-making authority to the SEZs).

business operations" will be penalized.¹⁴² The term illegal business operations, however, remains undefined.¹⁴³ Similarly, if a foreign business or individual is found engaging in a "direct profit making" business, the penalties may carry a 20,000 yuan fine and the termination of the business operation.¹⁴⁴ Unfortunately, because the law is vague with respect to the definition and elements of a direct profit making-business, it is extremely difficult for a foreigner to comprehend the nuances of the regulations.

B. TYPES OF SPECIFIC CRIMES

Because reliable information and statistics on economic crimes are sparse and often incomplete, one must rely on the annual reports of the Supreme People's Court and the Supreme People's Procuratorates to trace changes in criminal activity in any one specific area.¹⁴⁵ A review

142. SHENZHEN REGISTRATION REGULATIONS art. 13, para. 3. The penalty is either confiscation of the "illegal" income, or a fine of up to three times the amount of the losses incurred through the illegal activity. *Id.*

143. Zheng, *China's SEZs*, *supra* note 133, at 224. Illegal business operations can be illegal because either the activity extends beyond the scope of government allowed business or violated substantive law. *Id.*

144. SHENZHEN REGISTRATION REGULATION, *supra* note 142, art. 14.

145. See *supra* notes 61-65 and accompanying text (discussing SAPA). Although this Comment covers only economic crimes, a range of other economic offenses remain, plaguing China. *Id.* These crimes fall under the jurisdiction of SAPA and, therefore receive administrative penalties. *Id.*

Although commentators generally agree that China has had a significant increase in the level of economic crimes since the enactment of its open-door policy, reliable information and statistics are difficult to find and often incomplete. In addition, the lack of data collection and case reporting and documentation on economic crimes make it difficult to trace the level and changes in criminal activity in any one specific area. See 1980 CHIEF PROCURATOR REPORT, *supra* note 117, at 44 (stressing the necessity of making the legal system strong). From January until September 1980, 43% of the cases dealing with economic crimes were cases of corruption. *Id.* at 47. There were 89 embezzlement cases involving more than 20,000 yuan. *Id.* at 47; WORK REPORT OF THE SUPREME PEOPLE'S PROCURATORATES, 5th NPC, 4th Sess., (Dec. 7, 1981), reprinted in New China News Agency (NCNA) [in Chinese], Dec. 14, 1981, trans. in F.E.—6914, Dec. 24, 1981, at C5, C7 [hereinafter 1981 CHIEF PROCURATOR REPORT] (discussing that, for example, from January through September 1981, there were 31,000 criminal cases tried involving economic crimes and 16,000 criminal economic offenses against law and discipline).

Offenses against law and discipline consist of corrupting social morals and causing damage to state property. *Severely Deal with Looting Incidents*, Renmin Ribao [in Chinese], Dec. 15, 1981, at 2, trans. in F.B.I.S.—CHI, Dec. 23, 1981, at K1. Looting of state supplies is considered an economic criminal offense. *Id.*; 1981 REPORT, *supra* note 98, at K1. Speculators, smugglers, and others who disrupted socialist economic order received severe punishment. *Id.* There were 186 cases of smuggling, 5,243 cases of graft, 1,138 cases of bribery, 2,011 cases of speculation and profiteering. WORK OF THE SUPREME PEOPLE'S COURT, 5th NPC., 5th Sess., (Dec. 6, 1982), reprinted in Renmin Ribao [in Chinese], Dec. 17, 1982, at 2, trans. in F.B.I.S.—CHI, Dec. 21, 1982, at K8, K10 [hereinafter 1982 REPORT]. 250 cases involved over 100,000 yuan

of the Court and Procuracy indicates that the following economic crimes fall outside the jurisdiction of SAPA.

1. Government and Party Corruption

Under the Criminal Law Code, state functionaries, although not privileged, receive preferential treatment in certain circumstances that exempts them from criminal sanctioning.¹⁴⁶ In early 1980, a "crisis of confidence" occurred within the Party and certain Central Committee officials expressed concern regarding whether implementation of the four modernizations could be successful.¹⁴⁷ During this time, the Party revised its Constitution (CCP Constitution).¹⁴⁸ In an effort to have the

each. *Id.* From January through September 1982, 24,636 economic criminal cases were heard. *Id.* Serious economic crimes rose to 32,605, in which 2,512 were classified as major, involving money over 10,000 yuan. *Id.*; see *Moves Against Economic Crimes*, AUSTRALASIAN CHINA REP., Mar. 1983, at 7 (reporting 164,000 economic crimes in Chinese press in 1982); *Legal Issues*, SINO-BRITISH TRADE REV. Mar. 1983, at 10 [hereinafter *Legal Issues*]. 86,000 of the 164,000 were heard and 30,000 offenders were sentenced. *Id.*; REPORT ON THE WORK OF STRIKING AT SERIOUS CRIMES IN THE ECONOMIC FIELD, CPC Central Committee Discipline Inspection Commission Report of July 25, 1983, reprinted in *Xinhua* [in Chinese], July 26, 1983, trans. in F.B.I.S.—CHI, Aug. 1, 1983, at K9 [hereinafter 1983 ECONOMIC CRIME REPORT] (assessing the development of economic criminal activity since the implementation of the 1982 Resolution on Striking at Serious Crimes in the Economic Field). During the first five months of 1983, 192,000 economic crimes were reported. *Id.* 131,000 cases (71%) were completed by April. *Id.* at K9. 71,000 Party members participated in economic criminal activity. *Id.* Of these, 8,500 were deprived Party membership. *Id.* 170 people acquired illegal gains amounting to more than 100,000 yuan. *Id.* 7,000 people had illegal incomes amounting to more than 10,000 yuan. *Id.* The total amount of money and property recovered equalled more than 410 million yuan. *Id.* Approximately 24,000 people turned themselves in for committing economic crimes. *Id.* Thus, in 1982, there were 35,156 criminal cases. *Id.* In 1983 there were 51,486 criminal cases—a 46.3% increase. *Id.*; see also *Zheng Tianxiang Speaks to NPC on Economic Crimes*, *Zhonghuo Xinwen She* [in Chinese], Jan. 14, 1986, trans. in F.B.I.S.—CHI, Jan. 16, 1986, at K22 [hereinafter *Zheng Tianxiang Speaks*] (stating that in 1985 there were 48,400 economic criminal cases); *Economic Crime Shows a Drop*, *China Daily*, Dec. 31, 1987, at 3 (attributing the decrease in the rate of economic crimes to the effectiveness of the anticorruption campaigns). In 1986, the Supreme People's procuratorate announced a 40% decrease in economic crimes over 1986, but noted that the crimes had become more serious in nature. *Id.*; *Crackdown on Economic Crimes*, 33 BEIJING REV. 7 (Aug. 15, 1983) (providing a summary of the 1983 Economic Crime Report).

146. See CRIMINAL LAW CODE art. 192 (PRC) (noting that state functionaries who fail to observe or uphold their official duty may receive an administrative sanction); see also Maodi, *Chinese Discipline Should not Replace State Law*, *Jiefang Ribao* [in Chinese], Oct. 7, 1980, trans. in F.B.I.S.—CHI, Oct. 21, 1980, at L5 (noting that party members often punish high-ranking officials of the Party through Party discipline instead of state law). Leading Party officials are often ignorant of the law. *Id.* at L6. It is very difficult to judge crimes committed by Party members because they are punished internally according to Party discipline. *Id.*

147. *Inside Story on the Revision of the CCP Constitution*, Cheng Ming [in Chinese], July 1, 1980, trans. in F.B.I.S.—CHI, July 16, 1980, at U11.

148. See *id.* (discussing the consideration of economic concerns in developing the

CCP Constitution reflect "equality for all before the law" and the non-existence of a privileged class and detect unauthorized or unlawful activity, the Party amended the draft revision of the CCP Constitution.¹⁴⁹ The amendment upgraded and expanded the powers of the Commission for Inspecting Discipline and established the Guiding Principles Governing Inner-Party Political Life.¹⁵⁰ The purpose of the Commission for Inspecting Discipline is to report any violations of Party discipline regulations to the appropriate agencies at the appropriate national governmental levels.¹⁵¹ At the same time, the Chief Procurator of the Supreme People's Procuratorate issued a statement calling for a concerted effort to fight unlawful activity by state functionaries.¹⁵²

It was not until 1983, when the Commission for Inspecting Discipline released its report on economic crime, that the Party publicly recognized and chastised Party and government corruption.¹⁵³ The Commission identified lack of morals and inefficient management of Chinese officials as the primary causes of corrupt activities.¹⁵⁴ Some of the cases exposing government corruption included charges of smuggling,¹⁵⁵ bribery,¹⁵⁶ and embezzlement.¹⁵⁷ The real exposure of government corrup-

new CPP Constitution).

149. *Id.*

150. 1982 *Editorial on Punishing Criminals*, *supra* note 15, at K7. The Guiding Principles for Inner Party Political Life do not allow state functionaries to use their official position to receive private benefit. *Id.*; see *Cadres Observing Law, Discipline*, Beijing Dom. Serv. [in Chinese], Sept. 7, 1980, *trans. in* F.B.I.S.—CHI, Sept. 8, 1980, at L12 (relating the speech of Premier Hua GuoFeng of the NPC). The Premier called on party cadres to set a good example. *Id.*

151. See *Punishment for Squanderers of Public Funds*, BEIJING REV., Aug. 18, 1980, at 6 n.33 (stating that the Commission imposed fines and disciplinary measures on a deputy director of a local administration bureau for squandering 1,398 yuan of public funds for food and entertainment). The Commission also imposed fines on a cartons factory in Chongking for spending 1,430 yuan on food and entertainment for its customers, while including the expenditures as production costs. *Id.*; *CCP Discipline Group Tackles Economic Crimes*, Xinhua [in Chinese], July 22, 1982, *trans. in* F.B.I.S.—CHI, July 26, 1982 at K10 (noting that the Discipline Inspection Commission appointed its first 154 employees to aid municipalities in the detection of serious economic crimes).

152. *On Handling the Party Membership of Communist Party Members Who Are Punished in Criminal Cases*, Renmin Ribao [in Chinese], Mar. 3, 1982, *trans. in* F.B.I.S.—CHI, Mar. 9, 1982, at K13.

153. 1983 ECONOMIC CRIME REPORT, *supra* note 145, at K10-18 (reporting that the most troubling concern for the Commission was the amount of government and Party corruption).

154. *Id.* at K12.

155. See *Customs Administration to Stamp Out Smuggling Activities*, F.B.I.S.—CHI, Apr. 16, 1980, at L6 (noting the state's goal is to stamp out smuggling in China). In 1979, there were 13,400 smuggling violations, a 41% increase over 1978. *Id.* The total value of the smuggled goods exceeded 7.3 million yuan, three times more than in 1978. *Id.*

156. See *Bribe-Taking Communist Party Members Arrested*, Xinhua [in Chinese],

tion, however, began in 1986 when high officials called for the death penalty for those senior cadres members¹⁵⁸ and their children¹⁵⁹ who engaged in serious economic criminal activity.¹⁶⁰ The incentive for certain high officials to expose the economic crimes of their colleagues' children originated in the ongoing power and ideological struggle between the conservative Marxists and the Reformists.¹⁶¹

July 13, 1987, *trans. in* F.B.I.S.—CHI, July 14, 1987, at K3 (providing an example of bribery of a Chinese official by a Japanese merchant). In July 1987 the Central Discipline Inspection Commission issued a Decision which expelled all Chinese officials committing bribery from the Party. *Id.* From January to May 1987, 185 Chinese officials were arrested and expelled for committing bribery. *Id.*; Southerland, *Foreigners See Rise in Bribes in China*, Wash. Post, Apr. 23, 1987, at A1 & A26 (providing examples of the way bribery occurs in China). At one point, gifts were accepted as bribes in order to help the breakthrough of Chinese democracy. *Id.* With the influx of foreign investment in China, however, the Chinese became more selective in their options by demanding cash or cash deposits in foreign bank accounts. *Id.*

157. 1983 ECONOMIC CRIME REPORT, *supra* note 145, at K10-11. For example, a factory director was convicted of smuggling over 23 million yuan in goods. *Id.* at K10. A county director received the death penalty after misappropriating more than 60,000 yuan in bribes and smuggled goods. *Id.* A bank accountant embezzled 1.03 million yuan of bank money. *Id.* at K11. Certain state organs illegally traded over U.S. \$1 billion in foreign exchange. *Id.* at K10; Cronin, *supra* note 107, at 13. A First Secretary of the Party Committee of Luda was convicted of embezzling funds to construct sixty-four extravagant clubs, hostels, and offices. *Id.* Similarly, a group of employees, working for the Xian County Fuel Company, embezzled 161,000 British pounds. *Id.*

158. See Southerland, *supra* note 102, at A12 (defining a senior cadre as "an official at the level of bureau director or above").

159. Lee, *China's Next Great Leap Could Be Backward*, BUS. WEEK, May 8, 1989, at 54, 55 (discussing briefly official corruption by relatives of Deng and Zhao Ziyang).

160. See *supra* notes 98-102 and accompanying text (discussing the first occasion when the state imposed the death penalty for economic crimes).

161. See Luo Ping, *Notes on a Northern Journey: Doubts as to Whether Tigers Are Butchered to Cover Up Things*, Cheng Ming No. 103 [in Chinese], May 1, 1986, *trans. in* F.B.I.S.—CHI, May 14, 1986, at W1 (highlighting numerous cases where children of high officials were exposed and exploited for engaging in economic criminal activity). The purpose of this activity, known as pulling "pigtailed," was to expose the commercial criminal activities of children of officials. *Id.* The children of the officials are referred to as "tigers." *Id.* One example was made of Hu Shiying, the son of Hu Qiaomu, a famous preacher of Marxism-Leninism. *Id.* at W2. A procuratorate sentenced Hi Shiying to prison for embezzling over several million yuan in tuition fees for a correspondence course in legal education. *Id.* Another example is of the son and daughter of Zhen, allegedly involved in the Wang Chun case. *Id.* at W3. Wang Chun, the former vice mayor of Beijing, was involved in a U.S. \$300,000 bribery case and a dereliction of duty act for misappropriating U.S. \$2 million from the city treasury to his son. *Id.* One of the first cases to receive nationwide publicity as well as to question the constitutional right of equality before the law is of Ye Zhifeng and Zhang Changsheng. *Id.* They were both arrested and convicted on charges of bribery and divulging state secrets for leaking information concerning the import of foreign automobiles. *Id.* On March 27, 1986, the Beijing's Intermediate People's Court sentenced Zhang, the son of a senior army officer, to death. *Id.* Ye, the alleged principal offender in the case and daughter of Ye Fei, a member of the Communist Party Central Committee and former Navy commander, was only sentenced to 17 years. *Id.* Certain political and

2. Speculation

The relaxing of price controls combined with the increase in market-oriented economic legislation during the early 1980s led to stark increases in speculative activities.¹⁶² Since 1949, state regulation of prices is common in China. The open door policy introduced a hybrid economic mechanism which resulted in both a state and market controlled pricing system. Subsequently, the applicable concepts of free market profit-making and profiteering, derived from this hybrid mechanism, have created disorder and misunderstanding among the Chinese.¹⁶³

In 1987, the State Council issued regulations concerning the manipulation of state-controlled prices.¹⁶⁴ The purpose of the regulations is to increase control over speculative and profiteering activities.¹⁶⁵ The regulations provides punishments ranging from fines to life imprisonment depending upon the seriousness of the crime.¹⁶⁶

3. Contract Corruption

Another source of economic criminal activity is corruption in the area of contracting.¹⁶⁷ From 1949 until 1976 the government imposed strict administrative control over contracts entered into by state enterprises.¹⁶⁸ After 1976, due to the Cultural Revolution, the lines between administrative control and regulation of commercial activities became obscured,¹⁶⁹ considerably weakening the contract system and manage-

legal circles in China have asserted that she received a lenient sentence because she threatened to publicly reveal several hundred names of senior officials and their children involved in economic crimes. *Id.* These circles further contended that the motivating factor behind Zhang's death sentence was his potential threat as a witness. *Id.* at W5.

162. 1983 ECONOMIC CRIME REPORT, *supra* note 145, at K10. Twenty-seven percent of all economic crimes in 1983 were speculation and fraud. *Id.*

163. See *Crime in China*, AUSTRALASIAN CHINA REP., Sept. 1983, at 27, 31 (explaining Chinese confusion concerning economic activities are legal and quoting the crime statistics that resulted from this confusion).

164. *Speculation*, *supra* note 14, at 10.

165. *Id.*

166. See *id.* (noting that during the first six months in 1987, 240,000 cases of market-determined price increases were discovered). In Beijing 17,000 profiteers were arrested within the first two weeks after the implementation of the regulations. *Id.*

167. Leung, *China Faces Huge Ideological Hurdles in Plan to Sell Shares in State Concerns*, Wall St. J., Mar. 2, 1989, at A12 (noting that China's contract system is in a troubled state, partly due to corrupt government officials).

168. Dicks, *A Legal Opinion*, CHINA TRADE REP., Sept. 1981, at 11 (noting that administrative control consisted of various levels of approval, reporting, filing, and verification).

169. See *id.* (discussing the evolution of administrative supervision of contracts).

rial responsibility system.¹⁷⁰ By the end of the Cultural Revolution the contract, as a legally binding document, was virtually nonexistent.¹⁷¹ In the early 1980s, the decentralization of government control and the increase of private enterprises¹⁷² brought an increase in contract negotiation. To revive the concept of legally binding contract as a commercial document, the government announced measures to implement an economic responsibility system for industrial production.¹⁷³ This necessitated the creation of internal production management systems to reestablish order in commercial trade.¹⁷⁴

The paucity of economic legislation and appropriate administrative agencies to analyze the results of commercial projects, however, obstructed proper implementation of the economic responsibility system.¹⁷⁵ By 1983, China had more than 200 laws regulating the economy, but only a weak enforcement structure.¹⁷⁶ In recognition of this weakness, the government created the Ministry of Supervision (MOS), an individual state agency invested with the power to supervise and prevent contract corruption in commercial settings.¹⁷⁷

170. *Id.*

171. *Id.*

172. *State's Share of Businesses Falls in China*, N.Y. Times, Mar. 20, 1989, at 28 (discussing the rising percentage of private enterprises and collectives in China).

173. *State Council's Economic Responsibility Order*, Xinhua [in Chinese], Dec. 6, 1981, *trans. in* F.B.I.S.—CHI, Dec. 7, 1981, at K20 (describing the contents of the economic responsibility production management system). The function of the system is to clearly define the rights, responsibilities, and interests of those engaged in industrial production. *Id.*

174. *Id.*

175. See Yang Xueqi, *Economic Legislation Should Be Strictly Enforced in Adopting the System of Economic Responsibility Among Commercial Enterprises*, 1 CAIJIN WENTI YANJIU (THE STUDY OF FINANCE AND ECONOMIC PROBLEMS) 33, 33-37 (1982) [in Chinese], *trans. in* J.P.R.S.—CHI No. 80512, Apr. 7, 1982, at 58 (stating that economic legislation must exist to determine which economic activities are legal); Shen Yiqing, *The Scope of Capital Construction Must Be Controlled—Capital Construction Policymakers Should Also Implement a Responsibility System so as to Know Who Draws Circles and Who Takes Economic and Legal Responsibility in Case of Major Mistakes*, Shijie Jingji Daobao [in Chinese], Mar. 21, 1983, *trans. in* J.P.R.S.—CHI No. 83504, May 19, 1983, at 1 (noting that a causal connection exists between mistakes in investment decisions which lead to poor capital investment opportunities and the failure to implement a responsible system among policymakers for their bad investments). Although departments and divisions responsible for investment distribution and financial supervision exists, a department does not exist to analyze the results of the investment when the project is completed. *Id.* at 1.

176. Yaowu Bian & Chichang Xie, *Economic Legislation and Economic Reform*, Renmin Ribao [in Chinese], May 11, 1983, *trans. in* F.B.I.S.—CHI, May 17, 1983, at K5 (emphasizing the necessity of establishing an economic organizational, administrative, regulatory, and supervisory system).

177. See *supra* note 110 (discussing the role of the Ministry of Supervision); see also *Ministry of Supervision Helps Detect Corruption*, Xinhua [in Chinese], June 9, 1988, *trans. in* F.B.I.S.—CHI No. 88111, June 9, 1988, at 34 (praising the Ministry of

4. State Secrets

Another economic crime that increased dramatically with the onset of the Cultural Revolution was the divulgence of state secrets, a crime rooted in the Chinese tradition of protecting the Party.¹⁷⁸ In 1980, the government reinitiated previously ignored regulations designed to protect state secrets.¹⁷⁹ The Party charged the general Chinese populace, government officials, and Party members with the responsibility of protecting state secrets.¹⁸⁰

The definition of a state secret is extremely broad,¹⁸¹ making it easy to violate the new regulations.¹⁸² To violate a state secret three elements must be met:¹⁸³ the offender must work for the state, the act must violate a security regulation of the state, and the information disclosed must be of a serious nature.¹⁸⁴ If a violation occurs, the appro-

Supervision for saving China U.S. \$30 million by detecting corruption in foreign contracts). Between June 1987 and June 1988 the Ministry of Supervision investigated 300,000 contracts negotiated with foreign companies and found illegal activity amounting to U.S. \$30 million. *Id.*

178. See *Heighten Our Vigilance*, *supra* note 96, at L8 (explaining that guarding state secrets is everyone's duty—the Party's, the army's, and the people's).

179. PROVISIONAL REGULATIONS ON GUARDING STATE SECRETS, 5th NPC, 12th Sess., (Apr. 11, 1980), reprinted in *Xinhua* [in Chinese], Apr. 10, 1980, *trans. in* F.B.I.S.—CHI, Apr. 14, 1980 at L7-11 [hereinafter STATE SECRETS LAW]; see Ching, *Protecting State Secrets, Chinese-Style*, *Asian Wall St. J.*, Apr. 18, 1980, at 4 (interpreting the impact of the implementation of the State Secrets Law in 1980).

180. STATE SECRETS LAW, *supra* note 180, at L11.

181. See *id.* at L7 (outlining the contents of the new law); Rong Lie, *What Constitute [sic] the Crime of Revealing State Secrets?*, *Guangming Ribao* [in Chinese], June 19, 1981, *trans. in* J.P.R.S.—CHI No. 78678, Aug. 5, 1981, at 39 (defining the crime of revealing state secrets). The second regulation of the Provisional Regulations on Keeping State Secrets defines Party and state secrets as those encompassing all important political, economic, military, and scientific and technological matters which have not been publicized or are not permitted to be publicized. *Id.* at 40. The location, content, and consequences of the revealed secret determines whether a secret is serious. *Id.* at 40; see also Debes, *Multinationals Vs. The Snoops*, *BLS WEEK*, June 23, 1986, at 30 (discussing censorship of privileged information in developing countries). China's method of censorship is manipulating or distorting germane data by classifying many of its laws and regulations as *neibu*—so secret that foreigners cannot see them. *Id.* at 32. Foreign business people complain that this method hinders sound business transactions and obstructs fair arms-length agreements in foreign investment decisions. *Id.* at 32-33.

182. See Zhiguo An, *Crime of Betraying State Secrets*, *BEIJING REV.*, May 17, 1982, at 3 (describing two separate cases in which state functionaries were convicted of divulging state secrets to foreigners, after they unsuccessfully argued the vagueness inherent in defining a state secret); *It Is Necessary to Severely Punish Criminals Who Leak State Secrets*, *Renmin Ribao* [in Chinese], Mar. 27, 1982, *trans. in* F.B.I.S.—CHI, Mar. 29, 1982, at K1 (discussing in detail the famous case of Li Guangyi, who was convicted of divulging state secrets to foreigners after losing his defense because of the confusion concerning the definition of a state secret).

183. CRIMINAL LAW CODE art. 186 (PRC).

184. *Id.*

priate agency or branch imposes either an administrative or criminal penalty depending upon the seriousness of the offense. For example, when state secrets are sold for profit the nature of the offense is criminal, resulting in the imposition of the more serious criminal punishment as opposed to an administrative sanction.¹⁸⁵ Those engaged in selling or deliberately divulging state secrets to "enemies at home or abroad" or to "domestic and foreign profiteers" are subject to a comparatively severe punishment for counterrevolutionary crimes.¹⁸⁶ If the effects of such violations are serious, even the death penalty may be imposed.¹⁸⁷

5. Tax Evasion

The recent imposition of taxes on Chinese people and businesses spawned the crime of tax evasion.¹⁸⁸ Due to the relative immaturity of the tax system, the percentage of noncompliance is very high.¹⁸⁹ Because of this noncompliance, China's past efforts to implement fiscal reform by converting state-owned enterprises into tax-paying entities have been largely unsuccessful.¹⁹⁰

185. *Id.*

186. STATE SECRETS LAW, *supra* note 180, art. 13, at L11. The language of the regulations initially was not changed. *Id.* Terms such as counterrevolutionary and enemy could be interpreted as used during the Mao period, although the new Codes were already in effect. *Id.*; see *supra* notes 49-55 and accompanying text (discussing China's history of dictatorship and democracy). Perhaps the purpose of retaining the old terms was to effect a means of stressing the importance of the regulations since the populace was still unfamiliar with and uninformed of the new Criminal Law Code.

187. CRIMINAL PROCEDURE CODE art. 103 (PRC).

188. See INDIVIDUAL INCOME TAXATION PROVISIONAL REGULATIONS (promulgated on Dec. 15, 1986, and effective on Jan. 1, 1987), *trans. in CHINA L. & PRAC.*, Jan. 13, 1987, at 7 (stating the appropriate income tax is based on yearly salary). Taxes for individuals range from 20% for 400 yuan to 60% for 800 yuan. *Id.*; PROVISIONAL REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON THE INCOME TAX OF PRIVATE ENTERPRISES (adopted on June 3, 1988, and effective June 25, 1988), *reprinted in Xinhua* [in Chinese], June 28, 1988, *trans. in F.B.I.S.—CHI* No. 88131, July 8, 1988, at 15 (discussing tax law of private enterprises).

189. See *Tax Crime*, *China Daily*, Aug. 22, 1988, at 2 (noting that 50% of China's state and collective enterprises and 80% of private businesses evade paying taxes).

190. See Delfs, *Extraordinary Items: Deficient Accounting Practices and Lack of Organization Seriously Hamper China's Efforts to Implement Fiscal Reforms*, *FAR E. ECON. REV.*, Nov. 10, 1983, at 101 (describing the results of a government inspection of the accounting practices of China's industries); *Banking, Finance and Investment*, *AUSTRALASIAN CHINA REP.*, Dec. 1985-Jan. 1986, at 41 (reporting on violations within the Agricultural Bank of China). Le Peijian, auditor-general of the PRC, announced that an audit of 58,000 enterprises in 1985 revealed 89 billion yuan in tax evasion, fraud, and waste. *Id.*; *China Daily*, June 16, 1986, at 1 (announcing a U.S. \$51.2 million revenue loss due to tax evasion in the first quarter of 1986). This figure is based on the audit of 9,044 Chinese businesses. *Id.*; *China's Tax Auditors Find Fraud, Corruption*, *J. Commerce*, Apr. 29, 1987, at 5A (revealing that in 1986, material suppliers

The most important factor enabling a high tax evasion rate is the government's deficient accounting practices.¹⁹¹ These practices lead to inaccurate or distorted reporting and high inventory losses at the plant level.¹⁹² In an attempt to address the problems of inventory losses¹⁹³ and deficits in state-run industrial enterprises and commercial enterprises, the State Economic Commission issued a Circular on Eliminating Deficits to strengthen accounting practices.¹⁹⁴

The government's tax collection practices also facilitate tax evasion. All taxes are collected at the local government level for ultimate distribution to the national government. Thus, local government officials charged with collecting the business taxes generally own the businesses required to pay taxes. Usually these local government officials/owners have no difficulty finding "loopholes" to circumvent the taxes.

6. *Application of Chinese Law to Foreigners*

Because definitions of economic crime in the Criminal Law Code remain nebulous,¹⁹⁵ the Code's potential sanctioning impact on foreign citizens is often unnoticed. Both the Criminal Law Code and the Criminal Procedure Code, however, apply to anyone, except diplomats,¹⁹⁶ found committing a crime in China.¹⁹⁷

evaded 1.2 billion yuan (\$324 million) in taxes). Those businesses engaged in foreign trade evaded \$102 million in foreign exchange and \$184 million in renminbi currency in taxes. *Id.*; *Auditors Discover 7 Billion Yuan Used Illegally*, China Daily, Dec. 18, 1987, at 1 (noting that of the 119,000 enterprises and government units, auditors calculated 7.6 billion yuan in misappropriated funds and tax evasion).

191. Delfs, *Great Haul of the People: Pilferage and the Black Market Are Important Factors Behind Industrial Disorganization*, FAR. E. ECON. REV., Nov. 10, 1983, at 101.

192. *Id.*

193. *See id.* (attributing inventory losses to theft for sale on the black market).

194. *See State Economic Commission's Circular on Eliminating Deficits*, Jingji Ribao [in Chinese], Oct. 20, 1983, *trans. in* F.E.—CHI No. 7477, at C1, C4 (making strict enforcement of financial and economic discipline a key component in eliminating deficits).

195. *See supra* notes 97-98 (describing problems with the Criminal Law Code).

196. CRIMINAL LAW CODE art. 8 (PRC); CRIMINAL PROCEDURE CODE art. 12 (PRC).

197. CRIMINAL LAW CODE art. 3 (PRC); CRIMINAL PROCEDURE CODE art. 12 (PRC); *see* Cohen, *Reflections on the Criminal Process*, *supra* note 48, at 324-27 (discussing history of Chinese treatment of foreigners who committed criminal acts in China); Vee Lee, *Chinese-Style Justice Equals Chaos*, Asian Wall St. J., July 25-26, 1986, at 6 (discussing how China handles Hong Kong Chinese as distinguished from foreigners who commit economic crimes). It is very difficult to obtain case law in China because of selective disclosure. *Id.* China does not keep statistics on the amount of foreign criminal activity. *Id.* Although Chinese laws apply to all foreigners, overseas Chinese from Hong Kong are the most severely punished—the severest penalty to date has been the death sentence. *Id.* China does not recognize Hong Kong Chinese as Brit-

Presently, the Criminal Law Code only makes persons¹⁹⁸ and not corporations or other business entities criminal subjects.¹⁹⁹ The intermediate people's courts have jurisdiction over criminal cases involving foreigners.²⁰⁰ If a foreigner is suspected of committing a crime within China, the intermediate courts have the option to deport,²⁰¹ or to convict that person according to Chinese law.²⁰²

Chinese law applies extraterritorially to foreign persons if the punishment for the crime includes a period of imprisonment exceeding three years.²⁰³ Before the 1982 Resolution on Economic Crimes, most of the economic crimes carried sentences of less than three years imprisonment or criminal detention.²⁰⁴ The 1982 Resolution, however, dramatically increased the penalties to include sentences of ten years to life imprisonment or death.²⁰⁵ Due to this increase in sentencing, most

ish subjects, and thus, they enter China on "home visit permits" issued in Beijing. *Id.* The British Consulate does not have legal standing to represent Hong Kong Chinese arrested for criminal activity in China. *Id.* In addition, Chinese law does not extend privileges granted to other foreigners to Hong Kong Chinese. *Id.*; *Counterfeit FECs Bring Jail Terms*, China Daily, Aug. 13, 1987, at 1 (reporting that four Hong Kong Chinese were sentenced to prison for terms ranging from five years to life for smuggling counterfeit Foreign Exchange Certificates (FEC)).

198. CRIMINAL LAW CODE arts. 3-8 (PRC) (defining jurisdiction only over natural persons, not entities or corporations).

199. Zheng, *Business Organization and Securities Laws of the People's Republic of China*, 43 BUS. LAW. 551 (1988) (defining concepts such as corporation, enterprise, and other domestic and foreign business entities as legal persons). In civil matters the corporation is recognized as a legal person. *Id.* The extent of a corporation's liability in a civil action, however, is not clear from present legislation. *Id.*

200. CRIMINAL PROCEDURE CODE art. 15 (PRC).

201. CRIMINAL LAW CODE art. 30 (PRC). Article 30 allows for independent or supplementary deportation of foreigners charged with a criminal offense. *Id.*; see *Radio Lecture on the Deportation of Foreigners*, trans. in J.P.R.S.—CHI No. 86049, May 27, 1986, at 12 (interpreting the deportation law). Independent deportation refers to less serious crimes, which may not necessarily require sentencing, thereby expediting the deportation proceedings. *Id.* Supplementary deportation pertains to more serious crimes and requires criminal sentencing. *Id.* Article 30 is a permissive law. *Id.* at 13. The intermediate courts often consider the state of relations between China and the applicable foreign country before making a determination. *Id.*

202. See *supra* notes 195-205 and accompanying text (discussing the applicability of Chinese law to foreigners).

203. CRIMINAL LAW CODE art. 6 (PRC). This applies to those engaged in the following: the regular business of smuggling or speculating, *id.* art. 118; smuggling or speculating in "huge amounts", *id.*; forging or altering official documents, certificates or seals of state organs, enterprises, institutions or people's organizations which result in consequences of a serious nature, *id.* art. 167; or the extortion of money or private or public property by blackmail which leads to serious consequences, *id.* art. 154. Terms such as "huge amounts" and "serious consequences" are not expressly defined by the code, but rather receive their interpretation through political means announced in the anticrime and anticorruption campaigns.

204. See *supra* notes 145-94 and accompanying text (discussing economic crimes).

205. See *supra* notes 99-102 and accompanying text (discussing the 1982 resolution and amendments); *Hong Kong Businessman Sentenced to Life*, Xinhua [in Chi-

laws and penalties concerning economic crimes now apply to foreigners.

C. POLITICAL MEASURES IMPOSED TO CURB INCREASES IN ECONOMIC CRIME—ANTICRIME AND ANTICORRUPTION CAMPAIGNS

Since the codification of the Criminal Law Code and the Criminal Procedure Code, the Party has launched many anticrime campaigns.²⁰⁶ Although the Codes have established a legal foundation to foster a more stable social order, the anticrime campaigns, coupled with economic reform, have provided the impetus required for remolding the social order. The campaigns and reforms also have served to police corrupt activities born of the open-door policy by both influencing public opinion against corruption and further defining the Criminal Law Codes and sanctions.²⁰⁷

The government launched its first state-administered campaign against economic crime in 1982 after publicly acknowledging the significant increase in economic crimes.²⁰⁸ The NPC, the Party Central Committee, and the State Council adopted two resolutions defining economic crimes and imposing harsher sanctions. The first resolution, the 1982 Resolution on Striking at Serious Crimes in the Economic Field, defined smuggling, illegal peddling, corruption, bribery, speculation, deception, and theft of state and collective property as serious crimes

nese], Apr. 8, 1983, *trans. in* F.B.I.S.—CHI, Apr. 12, 1983, at E3. The Guangzhou Intermediate People's Court sentenced Li Zhanyun from Hong Kong to life imprisonment for bribing and corrupting state officials and smuggling rabbit fur out of the country. *Id.*

206. See Note, *Concepts of Law in the Chinese Anticrime Campaign*, *supra* note 50, at 1896 (1985) (detailing the history of Chinese law).

207. See Ching, *China Responds to Recent Crime Wave with Swift Justice. Longer Jail Terms*, Wall. St. J., Aug. 4, 1981, at 34 (noting one of the reasons for the increase in crimes was the negative influence of "foreign capitalist ideas"); *Han Guang Details Crime*, Xinhua [in Chinese], July 25, 1983, *trans. in* F.B.I.S.—CHI, July 27, 1983, at K3 [hereinafter *NPC Standing Committee Discusses Economic Crime*] (noting results have been obtained in China's attempt to thwart the upsurge of serious economic crimes). Chen Pixian, Vice-Chairman of the Sixth NPC Standing Committee, contended that the open-door policy necessitated the continuing struggle against economic crime. *Id.* at K6. Han Guang, Secretary of the Discipline Inspection Commission of the CPC Central Committee, noted that since the founding of the PRC in 1949, the number, frequency, scope, degree, and nature of economic crimes have been unprecedented due to the open door policy. *Id.* at K4; *see also infra* note 15 and accompanying text (discussing capitalist influences on the open-door policy).

208. *Xi Zhongxun on Corruption*, *reprinted in* Xinhua [in Chinese], Mar. 6, 1982, *trans. in* F.B.I.S.—CHI, Mar. 8, 1982, at K4 (stating that a report was read to the NPC detailing proposed punishment for serious economic crimes). Xi Zhongxun is the Vice-Chairman of the NPC Standing Committee and Director of the Commission of Legislative Affairs; *see* Weisskopf, *supra* note 15, at A13 (noting that although crime in China has been a problem since the 1960s, it was first publicly recognized after the open door policy).

which disrupted the economy.²⁰⁹ The second resolution, the 1982 Resolution on Economic Crimes Endangering Public Security²¹⁰ imposed harsher sanctions than were originally imposed under the Criminal Law Code upon state functionaries and people who committed crimes, including persons who committed crimes involving large sums of money.²¹¹

In these campaigns, the Chinese government expressly linked the increase in economic crimes with the injection of capitalist economic policies and ideology, a byproduct of the open-door policy.²¹² The government labelled the activity a "manifestation of class struggle."²¹³ To strengthen sanctions against these crimes, the NPC allowed the death penalty for serious economic crimes and a minimum penalty of ten years for other economic offenses.²¹⁴

The Chinese government and the Party experienced difficulty implementing the new resolutions, however, because similar political mass campaigns had a negative impact on Chinese society during the Cultural Revolution.²¹⁵ Thus, to implement the new crackdown on eco-

209. 1982 RESOLUTION ON ECONOMIC CRIMES, *supra* note 86, at K1.

210. *Id.* at K2.

211. 1982 REPORT, *supra* note 145, at K10 (stating that Chinese courts have heard cases according to their seriousness and importance). Cases involving Party cadres and large sums of money were heard first. *Id.*

212. *We Must Not Relax Our Struggle Against Serious Economic and Other Crimes*, Jiefang Ribao [in Chinese], Oct. 7, 1982 at 1, *trans. in* J.P.R.S.—CHI No. 82405, Dec. 7, 1982, at 37 (discussing the importance of addressing economic crimes while preserving the open-door policy).

213. 1982 CHIEF PROCURATOR REPORT, *supra* note 101, at K21, K23; *see It Is Imperative to Severely and Expeditiously Punish Economic Criminals According to Law*, Renmin Ribao [in Chinese], Sept. 15, 1983, *trans. in* F.B.I.S.—CHI, Sept. 20, 1983, at K4 (discussing reasons for continued crackdown on economic crimes). The class struggle is between socialist and capitalist ideologies. *Id.* at K5. One of the "poisons" of capitalist ideology, the Party asserts, is degenerate morality, which pollutes Party policy and social habits. *Id.* at K4; *Government Calls for Crackdown on Economic Crime*, *trans. in* F.B.I.S.—CHI, Feb. 22, 1982, at K8 (noting the results of economic crimes). Consequently, such activity has "inflicted serious losses on economic construction, the nation's economy and the people's livelihood, dampened the people's enthusiasm for strengthening socialism, damaged the Party's prestige, corrupted the Party's fine work style, and inflicted inestimable political losses." *Id.*

214. 1982 RESOLUTION ON ECONOMIC CRIMES, *supra* note 86, at K1; *see* WORK REPORT OF THE SUPREME PEOPLE'S PROCURATORATE, 6th NPC, 1st Sess., (June 7, 1983), *reprinted in* Xinhua [in Chinese], June 25, 1983, *trans. in* F.B.I.S.—CHI, June 28, 1983, at K1 [hereinafter 1983 CHIEF PROCURATOR REPORT] (assessing the achievements of the Chinese procuratorial system from 1978-1983). The procuratorates implemented the 1982 Resolutions to combat economic crimes. *Id.* at K3.

215. *See* Herbst, *supra* note 100, at 13 (noting that Mao used mass campaigns as devices to effectuate criminal order). Mass campaigning reached its zenith during the Cultural Revolution. *Id.* After the Cultural Revolution, the Party renounced the use of mass campaigns. *Id.* Consequently, the enactment of the Criminal Law Code and Criminal Procedure Code formalistically replaced mass campaigns. *Id.* In reality, how-

economic crimes efficiently, the Central Committee Discipline Inspection Commission (Commission) issued several recommendations regarding compliance with and enforcement of the new resolutions.²¹⁶ First, the Commission placed heavy burdens on both Party committees and all government officials, instructing them to abide by and enforce the new resolutions.²¹⁷ Second, the Commission called for adherence to the Party line and for people to assist the State in enforcing the resolutions.²¹⁸ Third, the Commission stressed the importance of publicity, using the newspaper, radio, and television media to announce the crackdown on economic crimes.²¹⁹ Finally, the Commission called for strengthening of the public security, procuratorial, and judicial organs.²²⁰

As the number of reported economic crimes increased throughout the mid-1980s,²²¹ the President of the Supreme People's Court admitted in 1986 that the previous legislation enacted to combat economic crimes was largely ineffective and the Court's sentencing power too moderate.²²² Consequently, in the following year, the government enacted two

ever, the mass anticrime and anticorruption campaigns of the 1980s are similar to those run by Mao. *Id.*; see also 1983 Chief Procurator Report, *supra* note 215, at K4 (explaining that in 1982, of the 31,000 economic cases, the procuratorates decided to resolve 17,000 cases by publicly charging the criminals as opposed to using the court system).

216. 1983 ECONOMIC CRIME REPORT, *supra* note 145, at K16-18.

217. *Id.* at K13.

218. *Id.* at K15.

219. *Id.* The Commission recommended the circulation of reports and the publication of articles and commentaries on typical major cases. *Id.* at K17. In addition, selected major cases were used as teaching materials for Party units. *Id.* The purpose of this type of publicity was to increase public awareness and promote socialist spirituality. *Id.*; see, e.g., *Strengthen Our Immunity*, Renmin Ribao [in Chinese], Sept. 6, 1983, *trans. in* F.B.I.S.—CHI, Sept. 12, 1983, at K9 (utilizing a commentary to publicize an example of an infamous corrupt criminal).

220. 1983 ECONOMIC CRIME REPORT, *supra* note 145, at K18.

221. WORK REPORT OF THE SUPREME PEOPLE'S PROCURATORATE, 6th NPC, 4th Sess., (Apr. 8, 1986), *trans. in* F.E.—CHI No. 8231, Apr. 12, 1986, at C1 [hereinafter 1986 CHIEF PROCURATOR REPORT]. The number of major crimes tripled in 1984. *Id.* Some of the more major crimes involved bribery, embezzlement, and speculation. *Id.* Monies involved ranged from several hundred thousands up to 10 million yuan. *Id.*

222. WORK REPORT OF THE SUPREME PEOPLE'S COURT, 6th NPC, 4th Sess., (Apr. 8, 1986), *trans. in* F.E.—CHI No. 8231, April 12, 1986, at C1 [hereinafter 1986 REPORT]. The factors in determining the seriousness of a crime are the amount of money involved and the level of damage to the reputation of the PRC. *Id.* at C2; see also Zheng Tianxiang Speaks, *supra* note 145, at K22 (discussing new measures to more strictly enforce economic criminal activity). Zheng Tianxiang is the president of the Supreme People's Court of the PRC. *Id.* Several of the recommended measures were: to impose harsher sanctions, to punish both parties engaged in bribery, to take stricter legal action against government officials who were derelict in their duties, to take stricter legal action against state and commercial enterprises as work units, and to impose austere measures on those convicted of speculation and fraud. *Id.*

regulations, codified in 1988, imposing harsher sanctions against those suspected of smuggling,²²³ embezzlement,²²⁴ and bribery.²²⁵ Similarly, a surge of legislation to control economic crimes, supplementing the Criminal Law Code and the 1982 Resolutions, erupted in the first quarter of 1988.²²⁶ In addition, the government empowered monitoring and enforcement agencies to play a stricter role in curtailing economic crime in the government sector, collective enterprises, and private industries.²²⁷

By mid-1988, however, a backlash resulting from these economic reforms struck Beijing,²²⁸ and the government began a slow retreat from

223. *Considers Smuggling Rules*, Xinhua [in Chinese], Nov. 17, 1987, *trans. in* F.B.I.S.—CHI No. 87222, Nov. 18, 1987, at 22. People caught smuggling narcotics, weapons, ammunition, counterfeit money, gold, silver, or other precious metals, rare cultural relics, and any goods with a value in excess of one half a million yuan will receive the death sentence. *Id.*

224. *Id.* Any person convicted of embezzling more than 50,000 yuan will receive the death penalty. *Id.*

225. *Id.* Any person accepting a bribe in excess of 10,000 yuan will receive life imprisonment or the death sentence. *Id.*

226. SUPPLEMENTARY PROVISIONS OF THE NATIONAL PEOPLE'S CONGRESS STANDING COMMITTEE REGARDING PUNISHMENT FOR THE CRIME OF SMUGGLING (adopted on Jan. 21, 1988, and effective on Jan. 21, 1988), *reprinted in* Xinhua [in Chinese], Jan. 23, 1988, *trans. in* F.B.I.S.—CHI No. 88016, Jan. 26, 1988, at 11; SUPPLEMENTARY PROVISIONS OF THE NATIONAL PEOPLE'S CONGRESS STANDING COMMITTEE REGARDING PUNISHMENT FOR THE CRIME OF CORRUPTION AND BRIBERY (adopted on Jan. 21, 1988, and effective Jan. 21, 1988) *reprinted in* Xinhua [in Chinese], Jan. 23, 1988, *trans. in* F.B.I.S.—CHI No. 88016, Jan. 26, 1988, at 11; *see* 2 CHINA L. PRAC. 12, 12-13 (1988) (providing a synopsis of both of the 1988 Provisions on Smuggling and Corruption and Bribery); *New Law to Check for Illegal Income*, China Daily, Feb. 5, 1988, at 4, (commenting on the newly adopted provision pertaining to punishment for corruption and bribery). Government officials suspected of spending more than their legal income must be able to document their financial sources. *Id.* Those who are not able to substantiate their income are subject to penalties not to exceed a five-year prison sentence. *Id.* The average annual salary of a state official is 2,000 yuan. *Id.*

227. *See Economic, Criminal Cases Targeted*, China Daily, Apr. 21, 1988, at 3 (discussing the heightened role of the Public Security Ministry in curbing economic crimes). The public Security Ministry is also slated to receive independent decision making authority in carrying out its tasks. *Id.*; Qu Yingpu, *New Ministry Seeks Out Financial Corruption*, China Daily, Jan. 13, 1988, at 2 (providing examples of cases investigated by the MOS). From September 1987 to December 1987, the MOS investigated 379 cases involving illegal activities between Chinese firms and foreign companies. *Id.*

In 1988 economic crime-reporting centers mushroomed in China. *Chengdu Citizens Report Suspected Money Crimes*, China Daily, Aug. 9, 1988, at 3 (noting for example, that residents in Chengdu, a large city and capital of Sichuan Province, reported 390 cases of economic-related criminal activity in a one-month period).

228. *See* Tsui Ping, *The Public Security Ministry Held a Meeting With Beijing Municipal Leading Organs to Condemn "Revival of Liberalization,"* Cheng Ming [in Chinese], July 1, 1988, *trans. in* F.B.I.S.—CHI No. 88126, June 30, 1988, at 28 (noting that the student protests disturbed the Chinese officials). Various governmental agencies attributed the instability of the price reform system and capitalist influence to the student unrest. *Id.*; *China Foresees "Turmoil,"* Wash. Post, July 7, 1988, at A29

its open-door policy. The effects of increased economic crime on Chinese society erupted in June 1988, when students of Beijing University held rallies condemning corruption by government officials and demanding rights to freer democracy.²²⁹ Government officials, fearing the threat of social instability,²³⁰ reacted by issuing warnings against impeding economic reforms and the open-door policy.²³¹ The students reasserted their demands for democracy and an end to government corruption in demonstrations during the spring of 1989.²³² The govern-

(attributing inflation, corruption, and income disparities to relaxed Party controls and a reformed pricing system).

229. *Press Warns of Danger of Reforms*, S. China Morning Post, June 10, 1988, at 8.

230. Ignatius, *Chinese Leaders Will Seek to Maintain Stability at Annual Parliament Session*, Wall St. J., Mar. 20, 1989, at A11 (observing that the Party expected social unrest due to disparities in income levels and the high rate of inflation—over 30% in cities).

231. *Id.*

232. Ignatius, *Death of Ex-Party Chief Hu Is Viewed as Blow to China's Liberal Reformers*, Wall St. J., Apr. 17, 1989, at A9 (noting that the death of former Communist Party Chief Hu Yaobang stirred unrest among the Chinese students and intellectuals). Hu Yaobang was known for his strong advocacy of liberal reforms. *Id.* His death enabled conservative leadership to denounce liberal reforms and democracy. *Id.* Simultaneously, however, his death motivated students to loudly protest for democracy and against official corruption, which the students and intellectuals viewed as an obstacle to true economic reform. Holley, *Students Protest in China*, Wash. Post, Apr. 18, 1989, at A18. Several days later, the student protests broke into a 15,000 people demonstration denouncing official corruption. Southerland, *Students Press Protest Rallies in Beijing*, Wash. Post, Apr. 20, 1989, at A1. Protesters charged officials with squandering funds in foreign bank accounts and favoritism in placing relatives in government positions. *Id.* In addition, the student protesters submitted a list of demands to the government which included:

free speech and free press, removal of restrictions on street demonstrations, rehabilitation of those victimized by two major antiliberal political campaigns of the past six years, public disclosure of national leaders' income, more money for education, and a reassessment of Hu that would credit him for his contributions to democracy.

Holley, *Chinese Students Demonstrate at Communist Party Compound*, Wash. Post, Apr. 19, 1989, at A21. The demonstrations escalated to over 150,000 participants within one week, reflecting a sophisticated organizational leadership among the students. Southerland, *150,000 Chinese March to Demand Democracy*, Wash. Post, Apr. 22, 1989, at A1. During the April 22 demonstration the students called for a nationwide boycott of classes. Southerland, *Chinese Students Call for Boycott of Classes*, Wash. Post, Apr. 23, 1989, at A25. The Party called for a halt to the demonstrations and labelled participants and activists "counterrevolutionary." Southerland, *Beijing Warns Students to Stop Protests*, Wash. Post, Apr. 26, 1989, at A21. A government official agreed to a dialogue to respond to the demands proposed by the students, but the Party increased its statement that the demonstrations were a "planned conspiracy" against it. Southerland, *100,000 in Beijing Mount Defiant, Peaceful March*, Wash. Post, Apr. 28, 1989, at A1. Government officials called off a major crackdown on the student demonstrators out of fear that such a crackdown would cause the demonstration to spread possibly through China. Southerland, *Beijing Calls Off Crackdown on Student Protesters*, Wash. Post, Apr. 29, 1989, at A1. Government officials met with

ment's imposition of martial law and the act of opening fire on the student demonstrators²³³ crippled the student demands for an end to government corruption, embarking on perhaps one of the strongest anticrime campaigns in Chinese history—the results of which remain unknown to date.

China's latest attempts to control economic crimes have led to sharp reductions in capital investment.²³⁴ For example, the State Council, in

leaders of the demonstrations, but rejected their demands. Southerland, *Chinese Government Rejects Demands of Student Protesters*, Wash. Post, May 3, 1989, at A16. Zhao Ziyang, in an effort to appease student protesters, agreed to "carry forward political restructuring" along with economic reforms. Southerland, *Top Chinese Official Promises to Promote Political Reforms*, Wash. Post, May 9, 1989, at A1. Zhao's promise, however, had little effect on the protesters as they entered into a major hunger strike, reiterating their demands for more liberal reforms and the halt of government corruption. WuDunn, *Hunger Strikers at Helm of China Protest*, Wash. Post, May 19, 1989, at A1. The demonstrations rose to monumental and historical heights by May 19, posing the greatest threat to Communist rule since 1949. Greenberger & Ignatius, *Chinese Communism Faces a Crossroads as the Masses Speak*, Wall St. J., May 19, 1989, at A1.

233. Ignatius & Leung, *China's Hard-Liner Li Struggles for Political Survival as Standoff With Pro-Democracy Protesters Continues*, Wall St. J., May 23, 1989, at A15 (noting that the demonstrations began to weaken the internal leadership). Li, supported by Deng, declared marshall law on Tiananmen Square. *Id.* Zhao Ziyang gained support from the protesters which threatened his position with the Party. *Id.* Li attempted to purge Zhao by beginning a campaign to incriminate him. Leung, *Military Cast Kingmaker in China Leadership Struggle as It Seeks to Incriminate Party Boss, Purge Followers*, Wall St. J., May 25, 1989, at A15. The government banned foreign media from reporting in China. Kirkpatrick, *TV: Transponding to and From China*, Wall St. J., May 26, 1989, at A9. Several days later, military troops rolled through Beijing, marking the beginning of the bloody massacre of student protesters. Southerland, *Troops Roll Through Beijing to Crush Protesters; Hundreds Feared Killed as Chinese Fight Back*, Wash. Post, June 4, 1989, at A1. Deng justified the military crackdown by stating the need to suppress the "counterrevolutionary rebellion" of those seeking to "establish a capitalistic republic." Kristof, *Crackdown Backed*, N.Y. Times, June 10, 1989, at 1.

234. *Chinese Officials See Rapid Growth Continuing in 1989*, Wall St. J., Jan. 20, 1989, at A18 (noting that austerity measures implemented in the fall of 1988 will adversely affect foreign investment); Ignatius, *Chinese Planner Presents Measures to Cool Economy*, Wall St. J., Mar. 22, 1989, at A11 (noting that the 1989 austerity measures will affect future foreign contracts by giving priority to those contracts made by wholly foreign-owned corporations); Greenberger, Ignatius & Sterba, *China's Harsh Actions Threaten to Set Back 10-Year Reform Drive*, Wall St. J., June 5, 1989, at A1 (stating that the government crackdown which resulted in a bloody massacre of the student protesters was likely to dampen foreign investment and restrict trade and technology transfers); *Foreign Investors Shudder Over China*, Wall St. J., June 6, 1989, at A25 (noting the reluctance of many foreign ventures to continue investment in China until the political turmoil subsides). The June 4 massacre made many foreign corporations skeptical about future investment in China. *Id.* The United States, after Hong Kong, is the second-largest trading partner with China. *Id.*; Leung, *Chinese Modernization Drive Flagging*, Wall St. J., Aug. 14, 1989, at A8 (stating that the Tiananmen massacre, coupled with the ongoing 1988 austerity program, stifled economic modernization under the open-door policy); Ignatius & Leung, *Loan to Build Project in China Is Terminated*, Wall St. J., Oct. 17, 1989, at A24 (stating that a

an attempt to curb economic reform, severely limited the number of financial institutions permitted to borrow foreign funds or issue bonds in the international capital market.²³⁵ As a result, only ten of the more than one hundred financial institutions in China are permitted to engage in those activities.²³⁶ The current atmosphere in China is still in a volatile state, thereby rendering it difficult to ascertain the level of adverse impact that the latest campaign will have on China.

III. LEGAL ANALYSIS

The Chinese are presently at a cross-road. They desire economic reforms, but the current pace of reforms appears to be progressing too rapidly to assimilate easily into existing Chinese society.²³⁷ Economic reforms outdistance the legal and economic policies implemented to regulate efficiently economic growth and political change. When the Party opened up the country's doors to the world ten years ago, it was ill prepared for the tremendous influx of foreign investment.²³⁸ In reaction to the amount of foreign trade activity and in an effort to appease foreign investors' concerns, the Party codified new laws.²³⁹ In the meantime, however, to stifle the increase in corruption, the Party reverted back to political mass campaigning—a signal of weakness in the legal structure.²⁴⁰

When tracking the economic criminal events of the past ten years, the reasons for the economic slow down become more obvious. First, the Party appears unable to control the amount of criminal economic activity. Despite its major anticorruption campaigns, decisions, and res-

consortium of foreign lenders, including China's state-owned CITIC Industrial Bank, terminated a \$55 million loan). The reason for the cancellation of the loan is attributed to the unstable economic activity since the Tiananmen massacre and high foreign debt. *Id.* Foreign debt reached \$40 billion at end of 1988. *Id.*

235. *China Sharply Restricts Ability to Borrow Abroad*, Wall St. J., Feb. 16, 1989, at A11.

236. *Id.* The remaining 10 are the Bank of China, Bank of Communications, China Investment Bank, China International Trust & Investment Corp., and the international investment companies of the provinces of Guangdong, Fujian, and Hainan and of the cities of Shanghai, Tianjin, and Dalian. *Id.*

237. *See supra* notes 228-33 and accompanying text (describing the social unrest resulting from corruption and economic modernization).

238. *See* Browning, *After Tiananmen, Ominous Signs on Road to China*, Wash. Post, Nov. 5, 1989, at H1 (stating that the United States is the second largest trading partner with China). Trade between the United States and China surpasses U.S. \$8 billion annually. *Id.*

239. *See supra* note 77 and accompanying text (discussing the adoption of the Criminal Law Code and the Criminal Procedure Code).

240. *See supra* notes 206-33 and accompanying text (discussing the anticrime and anticorruption campaigns); *see also* note 145 (providing chronological numbers and percentage of economic criminal activity).

olutions enacting harsher sanctions,²⁴¹ economic criminal activity continues to increase. Second, the concept of decentralized power and localism in their nascent stages have greatly impacted the structure of the Chinese government and society.²⁴² At the outset of the open-door policy, the majority of economic criminal activity remained confined to the special economic zones. Now, increased regulatory power at the local level throughout China creates more opportunity for economic criminal activity.

The Party is also concerned with underlying changes in behavioral patterns because of economic reforms.²⁴³ As noted above, during the Maoist period the Party ruled by imposing fear and demanding that Chinese citizens behave in an altruistic manner for the benefit of the whole society. The demise of moral authority instigated rapacious behavior.

More importantly, the Chinese succeeded in masking the inherent problems of a developing economy by focusing on the results and consequences of economic reforms publicly, instead of creating a foundation to provide a transition from a state-controlled to a market-oriented economy. The Party chose to highlight economic crimes, while only haphazardly fashioning remedies to address the most significant problems of economic reform, namely, political reform, centralized authority, separation of powers, price reform, and inflation.²⁴⁴

The Party claims corruption exists due to the influx of capitalistic influences and ideas through the open-door policy.²⁴⁵ It also, however, continues to identify causes that are endemic to developing socialist countries with centralized government authority. Political favoritism, poor data collection, lack of managerial responsibility, a two-tier pricing system, sparse and nebulous laws, and lack of independent judicial power breed corrupt activity. It appears that capitalist influences through foreign investment activities provide the opportunity for more

241. See *supra* notes 98-99, 164-66 and accompanying text (illustrating several resolutions that imposed harsher sanctions).

242. See Ignatius, *Chinese Leaders Will Seek to Maintain Stability at Annual Parliament Session*, Wall St. J., Mar. 20, 1989, at A11 (noting that the increase of economic power at the regional level signifies the decline of central authority).

243. *Severe Punishment Should Be Given to Those Leading Cadres Who Violate Laws and Commit Crimes*, Hongqi [in Chinese], Feb. 16, 1982, at 6-8, *trans. in* F.B.I.S.—CHI, Mar. 10, 1982, at K6-10.

244. *Chinese Officials See Rapid Growth Continuing in 1989*, Wall St. J., Jan. 20, 1989, at A18 (stating that the 1988 official inflation rate in China was 18.5%).

245. See *supra* note 15 (discussing the correlation between the open-door policy and corruption).

substantial criminal activity.²⁴⁶ Opportunity, however, does not amount to causation.

Finally, despite the codification of the Criminal Law Code and the Criminal Procedure Code, compliance with these laws remain an obstacle to economic reform. It is difficult for the Chinese to rely on a legal system that is tainted by memories of the Maoist period and the Cultural Revolution. Legal education and understanding of the legal system have not advanced past their embryonic stages.²⁴⁷ To complicate matters, legal education trains lawyers not to protect individual's rights, but rather to protect Chinese interests in trade and negotiations with foreign countries.²⁴⁸

Arguably, individuals who are not protected by a legal system, who have always believed that *fa* (law) is corrupt, and whose own beliefs are founded in Confucianism and the concept of virtue will not abide by the legal system's laws. The drafters wrote many of these laws to promote foreign investment in the spirit of the open-door policy to prove to foreigners that China could construct a sound legal base. Although it is not clear whether the Party achieved this, it is clear that the Party continues to impose severe punishment on the Chinese people for benefitting from the open-door policy—a double-edged sword.

CONCLUSION

The 1980s mark the decade for combatting crimes in China, particularly economic crimes. The Chinese commenced positive reforms with the implementation of the Criminal Law Code and Criminal Procedure

246. See *supra* note 145 (sketching the rise in economic criminal activity).

247. *China's Top Leaders Acknowledge Crisis in Education Policy*, Wall St. J., Mar. 27, 1989, at A5D (stating that top Party leadership recognizes that education in China is in crisis). China gave low priority to education during the last ten years. *Id.* Approximately thirty-three percent of the Chinese attend elementary school and ten percent attend high school or college. *Id.* A twenty-five percent decrease in high school enrollment has occurred since 1979. *Id.*; RESOLUTION ON ACQUAINTING CITIZENS WITH BASIC KNOWLEDGE OF LAW (adopted Nov. 22, 1985), in PRC LAWS, 1983-1986, *supra* note 8, 203 (specifying measures enacted to familiarize Chinese citizens with the legal system). The Resolution includes all people. *Id.* Education of the law focuses on the Constitution and civil and criminal law. *Id.* Legal education is taught with ideological-political education at all levels. *Id.* at 204. The Resolution requires all levels of local governments to implement programs promoting education about Chinese law. *Id.*; see *supra* note 1, at 208 (noting that legal issues appear in popular media on a daily basis); Gelatt, *China's Propaganda Machine Turns Attention to Legal Education*, Asian Wall St. J., Mar. 4, 1980, at 6 (describing the Party's methods for "popularizing" the criminal code); see also Southerland, *Chinese Police Execute 8 Criminals in One Day*, Wash. Post, Sept. 15, 1987, at A17 (quoting Deng Xiaoping as a proponent of the use of mass executions as an instrument of education).

248. See *supra* notes 122 and 124 (emphasizing the lawyer's role in business and foreign investment matters).

Code. These codes provide a legal framework to regulate individual reactions to the economic reforms. The anticrime and anticorruption campaigns that the Party launched serve to regulate and protect the interests of Chinese society from corrupting influences. After ten years, however, the individual measures to curb economic crimes have resulted in few effective controls: mass campaigns and trials continue to be utilized to curb social ills, judicial independence and responsibility remain limited, class struggle is still prevalent, and capital influences are still being blamed for societal corruption. Widely divergent income disparities, stark price differentials for commodities, double-digit inflation, and lack of a strong political reform are some of the reasons for the current retraction of economic reforms.

The present government slowdown in economic reform may signal a period of reflection to winnow through the melange of developments over the past ten years and to reassess its policies and to harmonize its laws with political resolutions. The retraction, however, is undoubtedly a turn inward. While the door is not as widely opened as it was in the past, it recently swung westward toward the Soviet Union²⁴⁹—movements worthy of tracking.

249. See Leung, *Chinese Modernization Drive Flagging*, Wall St. J., Aug. 14, 1989, at A8 (noting foreign leaders' concern that foreign sanctions against China due to the Tiananmen massacre could "drive China into the arms of the Soviet Union"); *supra* note 30 (discussing political developments between the Soviet Union and China).